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A STUDENT'S GUIDE

TO

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—
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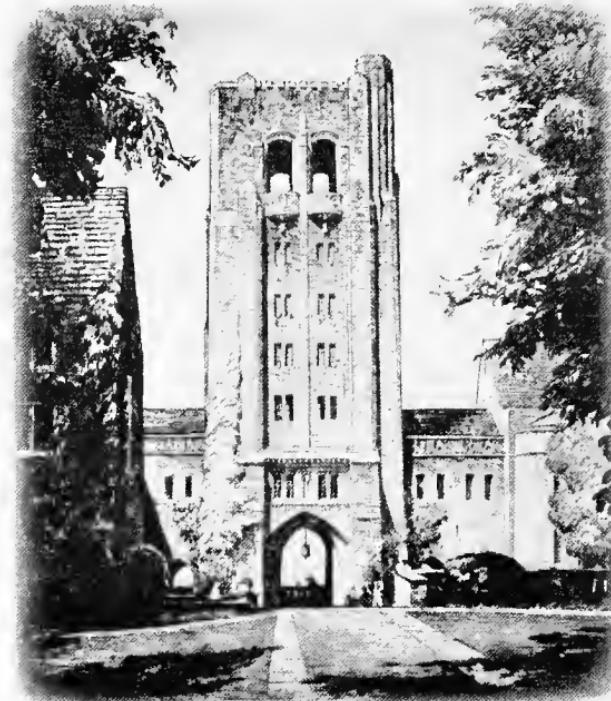
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W. D. DERL.

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PRIDEAUX'S CONVEYANCING.

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THE STUDENT'S GUIDE

TO

PRIDEAUX'S CONVEYANCING:

COMPRISING

NOTES THEREON;

TOGETHER WITH

A SET OF TEST QUESTIONS

Indermaur & Shwaites
EPITOMES OF THE FOLLOWING ACTS OF
PARLIAMENT:—
THE VENDOR AND PURCHASER ACT, 1874;
THE CONVEYANCING ACTS, 1881, 1882 & 1892;
THE SETTLED LAND ACTS, 1882, 1884, 1887 & 1890;
THE TRUSTEE ACT, 1888; 9/6/98
AND THE TRUST INVESTMENT ACT, 1889.

BY

JOHN INDERMAUR,
SOLICITOR,

Author of "Principles of Common Law," "Manual of Equity," "Manual of Practice," "Epitomes of Leading Cases," "A Concise Treatise on the Law of Bills of Sale," "Student's Guide to Bankruptcy," &c., &c.

THIRD EDITION.

LONDON:

GEO. BARBER, "LAW STUDENTS' JOURNAL" OFFICE,
16, CURSITOR STREET, CHANCERY LANE, E.C.

1893.

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LONDON :
PRINTED BY GEO. BARBER, CURSITOR STREET,
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PREFACE TO THIRD EDITION.

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THIS Guide to *Prideaux* has been for some little while practically out of print, and I determined some time ago to publish a new edition as soon as possible after the appearance of the 15th edition of “*Prideaux*.” This was published last month, and I have lost no time in preparing this third edition of my Guide. I have very carefully been through the new edition of “*Prideaux*,” and have altered and added to my notes, and generally revised them; I have also considerably revised and added to the Test Questions, and I have included Epitomes of certain important Acts of Parliament passed since 1885, the date of the last edition of this Guide. This little work is entirely unpretentious in its character, and if it continues in the future—as I believe it has in the past—to encourage students to thoroughly study “*Prideaux*,” and to somewhat assist them in the perusal of that work, then I shall be well satisfied. Students must not forget the importance in reading “*Prideaux*,” of not merely being content with my notes, but of adding to them at discretion, and it is

of course for this purpose that the notes have been interleaved with blank pages. I have also thought that it might be useful to interleave the Test Questions in like manner, and this, therefore, has been done.

J. I.

22, CHANCERY LANE,
February, 1893.



PREFACE TO FIRST EDITION.

—:o:—

THE substance of this small work is, to a great extent, a reproduction of matter ~~which~~ I have already published in the *Law Students' Journal*, with revisions and additions; the Test Questions are, however, entirely new. The various Acts of Parliament relating to Conveyancing which have been passed of late years, render the subject of Practical Conveyancing one calling for the student's special attention even more than formerly, and the dissertations in "Prideaux's Conveyancing" being most valuable to students, my notes on the work and the questions thereon have been written mainly as an encouragement ~~to~~ ^{for} more to study them. These notes are interleaved for the student to be able conveniently to add to them. The Epitome of Statutes will be found useful as a short way of running through their provisions, and also for reference in reading the Notes. The number of the *Law Students' Journal* containing my Epitome of the Conveyancing Act, 1881, has long been out of print, which is, in itself pretty good evidence of the special appreciation of its contents.

J. I.

22, CHANCERY LANE,
May, 1883.

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THE STUDENT'S GUIDE

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PRIDEAUX'S CONVEYANCING.

[With regard to the references given throughout to "Prideaux" the edition referred to is the last at the present date, viz., the 15th, published in January, 1893.]

VOLUME I.

CONTRACTS FOR SALE.

The Contract.—Observe requisites of Statute of Frauds and the essential parts of a contract. The contract may be made by letters if they contain essentials. See hereon Hussey v. Horne Payne (4 App. Cases, 311; 47 L. J., Ch., 751); Bristol, &c., Bread Co. v. Maggs (44 Ch. D., 616; 59 L. J., Ch., 472.)

A notice to treat given by a railway company does not form, or have the complete effect of contract till price fixed.

Title.—Forty years required, and as regards leaseholds the purchaser cannot now go behind the lease. Note that under the Conveyancing Act, 1881, the cost of producing deeds not in vendor's possession has to be borne by purchaser. See hereon *Re Johnson and Tustin* (30 Ch. D., 42; 54 L. J., Ch., 889.)

Any defects in title should be specifically stated and the

purchaser expressly precluded from raising any objections by reason thereof. Note that if part of property comprised in one lease is put up for sale, purchaser must be made aware of its being part only, for otherwise he might object, on the ground that he may be liable to eviction under condition of re-entry, on breach of covenants respecting remainder of property.

Also note that if property held under an underlease, this must be stated, otherwise purchaser may be liable on the conditions, covenants, &c., in the original lease, and this is so even if the conditions and covenants in the original and the underlease are identical.

As to what purchaser is to assume now on production of last receipt for rent, see Conveyancing Act, 1881, sec. 3 (4, 5), but this enactment will not prevent a purchaser showing that there has in fact been a breach of covenant.

As to length of title in some particular cases on an Open Contract.

(1.) *Tithes*.—Commence with original grant from Crown, and then deduce title for 40 years prior to sale.

(2.) *Enfranchised Copyholds*.—Note Conveyancing Act, 1881, sec. 3 (2), under which a purchaser has not now any right to call for the title to make the enfranchisement. Formerly he was entitled to call for the production not only of the copyhold title, but also of the title of the Lord of the Manor down to the date of the enfranchisement, unless, indeed, the enfranchisement was under the Copyhold Acts, which must be carefully distinguished.

(3.) *Allotments*.—Deduce title to property in respect of which allotment made down to award, and then to allotment. The allotment is freehold, copyhold, or leasehold, according to the tenure of the land in respect of which it is made.

(4.) *Exchanges*.—Note Common Law rule that it was

necessary not only to show title to land sold, but also to land given in exchange, but not so now because exchange no longer implies any condition of re-entry (8 & 9 Vict., c. 106, sec. 4). Observe specially the difference between the position under an ordinary exchange, and an exchange under General Enclosure Act, 1845 (8 & 9 Vict., c. 118, sec. 147), they being two utterly distinct things.

Incumbrances on land.—State them clearly on face of conditions, and if it is proposed to give further an indemnity, state that clearly also, giving the nature and terms of the indemnity. Note on this subject the convenient provision of sec. 5 of the Conveyancing Act, 1881.

Observe provision of Inland Revenue Act, 1888, with regard to unstamped instruments.

Identification of parcels.—Learn form of ordinary condition, and remember that its effect is that the deeds shall show identity, so that if they do not, a good title is not made out.

Consider effect of misdescription of quantity of property being sold, particularly with regard to the point of when a purchaser is entitled to rescind and when not so entitled, but only entitled to compensation. (Pages 23-30.)

Condition for delivery of requisitions within a given time.—This ordinary condition only applies from the delivery of a perfect abstract, that is an abstract which sets out with sufficient fulness every instrument which forms part of the vendor's title, and states every material fact. This condition will not be binding when the title is manifestly bad on the face of the abstract, *e.g.*, where vendor is a trustee and the time for sale has not arrived.

Condition giving Vendor liberty to annul sale on account of objections taken.—Note points which have been decided with regard to this condition. (Pages 32, 33.)

Vendor waives right to rescind by attempting to remove

objections. If a purchaser, knowing of defect in title, takes possession he waives his rights if the defects are irremovable, but not if they are removable. (*Re Gloag and Miller's Contract*, 23 Ch. D., 320; 52 L. J., Ch., 654.)

Vendor having defective title may cure it before day for completion, or after if purchaser has not repudiated contract.

The vendor cannot avail himself of this condition in a case in which he fails to show any title at all. (*Bowman v. Hyland*, 8 Ch. D., 588; 47 L. J., Ch., 581.)

If sale goes off, purchaser has a lien on the estate for amount of his deposit.

Completion of purchase.—Time is only of essence of contract where so stipulated for, or after reasonable notice, or if it appears so intended from nature of property, *e.g.*, a life estate, an annuity, short leaseholds, &c.

If nothing said as to interest, purchaser must pay it from day fixed for completion, from which date he gets the rents and profits. He can prevent payment of interest by placing money at a bank and giving notice that it is lying idle. This has no application where condition is that if not completed from whatever cause purchaser shall pay interest, for here he will always have to pay interest unless delay occasioned by wilful neglect or misconduct of vendor. (*Riley to Streatfield*, 34 Ch. D., 386; 56 L. J., Ch., 442.)

Deeds not handed over.—Purchaser entitled to copies at his own expense (Conveyancing Act, 1881, sec. 3 (6)). If vendor a beneficial owner, he is bound to give purchaser acknowledgment and undertaking under Conveyancing Act, 1881 (sec. 9). If a trustee is selling, the usual practice is to stipulate that he shall give the acknowledgment, but not the undertaking.

Miscellaneous points.—Observe provisions of 30 & 31 Vict., c. 48, as to employing a puffer and having a reserve.

Note the character in which (a) an auctioneer, (b) a

solicitor, holds a deposit on a sale of property. Observe rights of vendor with regard to forfeiting the deposit.

Under the Vendor and Purchaser Act, 1874, any dispute between vendor and purchaser, other than matters affecting the existence or validity of the contract, may be determined by an originating summons. Under this provision the judge has power to determine the validity of a notice to rescind the contract for sale. (*Re Jackson and Woodburn's Contract*, 37 Ch. D., 44; 57 L. J., Ch., 243.)

If a purchaser alleges that vendor's title doubtful, it is generally the duty of the Court to remove the doubt by deciding the point, but if the point is one of construction of some instrument, the Court will not usually decide it in the absence of interested persons.

If a purchaser sues for damages by reason of non-completion he can only recover back his deposit and costs of investigating title. He cannot recover compensation for loss of bargain. (*Bain v. Fothergill*, L. R., 7 H. L., 158; 43 L. J., Ex., 243.)

Loss happening after contract falls on purchaser, and benefit accruing after contract belongs to him. Note, however, that in the absence of express contract, a purchaser has no right to call for the benefit of the vendor's fire insurance policy (*Rayner v. Preston*, 18 Ch. D., 1; 50 L. J., Ch., 472). Further, if the insurance money is unwittingly paid to him, he will be bound to repay it to the insurance company out of the purchase money if the latter is paid to him in full (*Castellain v. Preston*, 11 Q. B. D., 380; 52 L. J., Q. B., 366).

A contract to sell property revokes any prior devise thereof, and the purchase money will go as part of the vendor's personality.

Observe the effect of bankruptcy on contracts to sell and purchase.

Observe the provisions of the Stamp Act, 1891 (sec. 59), as to certain agreements for sale and purchase requiring to be stamped with *ad valorem* duty.

Consider Precedent No. 1 (page 49). Go through sec. 3 of Conveyancing Act, 1881, and generally note various matters which would formerly have been expressly dealt with in conditions of sale, and which may now be omitted.

ABSTRACTS.

Root of title.—In putting property up for sale select some sound instrument at a reasonable date back, and stipulate that the title shall commence with that. A purchase deed or a marriage settlement is a good root of title. A purchaser cannot go behind the stipulated root of title, so that if the abstract commences with an appointment under a power the purchaser cannot call for the instrument creating the power. An admission to copyholds is not, however, a proper commencement of title without the prior surrender.

Though purchaser not entitled to go beyond time fixed by law or stipulated for commencement of title, he will be entitled to have earlier deeds handed over to him on completion.

Legal mortgages, though paid off, must be abstracted. Not usual to abstract equitable mortgages which have been discharged. Expired leases should not be abstracted.

Where land conveyed to trustees for sale it is not now necessary to abstract any separate deed declaring trusts of proceeds, unless an order has been made under section 7 of the Settled Land Act, 1884, giving leave to some person to sell.

Verification of Abstract—

Will.—Probate or office copy.

Fine.—Chirograph, or exemplification, or examined copy.

Recovery.—Exemplification or examined copy.

Bankruptcy Proceedings.—Certified copies.

Redemption of Land Tax.—Certificate of Commissioners with receipt of cashier of Bank of England and memorandum of registration.

Intestacy.—Letters of administration.

Partial Intestacy.—Probate and showing that property did not pass under will.

Instruments executed under Power of Attorney.—Note Conveyancing Act, 1881 (secs. 46 and 47), and Conveyancing Act, 1882 (secs. 8 and 9).

Copyholds.—Abstract should contain copy of the entries on the Court Rolls relating to the estate, and also all instruments showing the equitable title must be abstracted.

Advowsons.—Note that the Editor now assumes that the Vendor and Purchaser Act, 1874, applies here, and that the length of title is three incumbencies or 40 years, whichever is the longer, but in no case can more than 100 years be required.

Succession duty.—Receipt must be produced, unless the liability of the purchaser is barred by sec. 12 of the Customs and Inland Revenue Act, 1889, the provisions of which note.

Penalty for concealing deeds.—See provision of 22 & 23 Vict., c. 35, sec. 24. Misdemeanour, 2 years' imprisonment, but leave of Attorney General necessary before prosecuting.

Presumptions.—Encroachments made by a tenant are deemed to be for landlord's benefit unless it can be shown that tenant made same for his own benefit, *e.g.*, where he has fenced the encroached land separately.

Strips of land next to a public highway presumed to belong to owner of adjoining enclosed land and not to lord of manor.

INCUMBRANCES.

Requisitions as to—Need not be answered by vendor. (*In re Ford & Hill*, 10 Ch. D., 365; 48 L. J., Ch., 327.)

Middlesex Registry.—Memorials of wills to be registered within six months after death, but if death took place abroad, within three years of death.

As to effect of non-registration, note Vendor and Purchaser Act, 1874 (sec. 8).

An assignment of a legacy charged on land in Middlesex requires no registration.

As leases not exceeding 21 years do not require registration neither do assignments thereof.

Land registered under Land Transfer Act, 1875, does not require registration in local register.

Yorkshire Registry.—Note the Act of 1884 (47 & 48 Vict., c. 54) and consider its provisions, particularly observing that under it every assurance is to have priority according to the date of registration, and that the possession of the legal estate is not to confer any benefits contrary to this.

Judgments.—Note different statutes as to the law of judgments as affecting land, commencing with Statute of Westminster and concluding with Lands Charges Act, 1888—(51 & 52 Vict., c. 51, sec. 5.) Observe that under Real Property Limitations Act, 1874, a judgment appears to be absolutely barred after 12 years. (See *Jay v. Johnstone*, *Law Students' Journal*, January, 1893, p. 8.)

Under 27 & 28 Vict., c. 112, judgment creditor who has seized lands in execution under an elegend, may obtain an order for sale of his debtor's interest therein.

Equity of redemption.—Though this cannot be seized

under an elegit, yet equitable execution can be obtained by the appointment of a receiver, and this is in all respects equivalent to an elegit at law; but such orders as well as writs of execution must be registered at the Land Registry Office now, under the Lands Charges Act, 1888, and purchasers are not bound till this is done. Mere registration of judgments with the view of obtaining a charge on debtor's lands useless.

Judgments will not bind lands as against purchasers, &c., unless registered in local registry, nor will they bind by registration in local registry alone.

Administration of assets of deceased persons.—Judgments recovered against deceased will only have priority if registered or re-registered within five years of death. Do not confuse this with a judgment against deceased's personal representatives as to which registration is not necessary.

Crown debts.—These only bind when of record, provided they are duly registered and re-registered, nor since 28 & 29 Vict., c. 104, sec. 48, do they affect lands as against purchasers, &c., unless writ of extent issued and registered.

Lis Pendens.—It must be a pending suit, and not one that has been concluded. Must be registered and re-registered.

Although an administration suit is pending an executor may still sell leasehold property, and this is so even after decree, unless a receiver is appointed. So also, though an administration suit pending, a trustee for sale may sell real estate, but not after decree. But such a decree does not preclude a tenant for life from selling under the Settled Land Acts.

A purchaser not justified in refusing to complete merely because *lis pendens* registered. He must enquire as to whether the action is sustainable.

Grants of annuities.—Registration required under 18 & 19 Vict. c. 15, but though not registered good against purchasers with notice and against trustees in bankruptcy and judgment creditors whether they have notice or not.

“Land charges.”—Note the definition of this expression under the Land Charges Act, 1888, which establishes an office for registration.

Searches.—Learn up what searches should now in strictness be made. Consider specially when sale made by trustees, importance of search for *lis pendens*, by reason of sec. 7 of Settled Land Act, 1884.

Search should always be made for bankruptcy if circumstances such as to give ground for suspicion, and in fact hardly safe to omit this search unless vendor well known. Note, as to the risk run, the recent case of *In re New Land Development Association and Fagence* (1892), 2 Ch., 138. ^{96d}

When copyholds are being sold the court rolls should be searched for entries affecting the property.

Enquiry should always be made of any tenant of property as to the nature and terms of his tenancy.

PURCHASE DEEDS.

Corporation purchasing copyholds.—The lands must be surrendered to a trustee, who will be admitted, and not corporation direct.

Admission of one joint tenant, admission of all, and one can release his share to another without payment of any additional fine. Same in the case of co-parceners.

Tenants in common must be admitted severally, and a fine must be paid in respect of the share of each.

If limited to one for life and then in remainder, admission of tenant for life operates also as admission of remainderman, and one fine only is payable.

Fines on admission to Copyholds.—A fine arbitrary must be reasonable, which is defined as not to exceed two years' improved value on the admission of a single tenant. If two or more are admitted as joint tenants, two years' value may be taken for the first tenant, half that amount for the second, and half that amount for the third, and so on.

Entail in Copyholds.—This depends on whether there is a custom to entail, for the statute *De Donis* does not directly affect copyholds.

Note that where a testator desires his copyholds to be sold by his trustees, it is sufficient to direct sale without devising, and thus double fine saved.

Widow of copyholder not entitled to freebench, except by custom, and she has no such right out of a trust of copyholds, nor out of copyholds surrendered to her husband, but of which he was not admitted.

A lord having only a limited interest in manor may do all ministerial acts to bind his successor, so that if he accepts a surrender, his successor is bound to admit the surrenderee.

Enfranchisement.—Note chief provisions of the Copyhold Acts, 1852-1887, and observe that in enfranchisement under the Copyhold Acts the right to mines and minerals remains in the lord, and the commonable rights of the tenant are still preserved to him.

Married women.—Acknowledgment when necessary is sufficient now if before one commissioner. (Conveyancing Act, 1882, sec. 7.)

Married Women's Property Act, 1882, renders acknowledgment by married women unnecessary as regards all women married since the Act, and also if married before the Act if the property has accrued since the Act.

By reason of same Act if wife entitled to leaseholds, husband does not take them as before *jure mariti*, but as her administrator.

Infant's contract to purchase land is only voidable ; he may avoid or confirm it on attaining his majority, and his representatives have the same right, for the Infants Relief Act, 1874, does not here apply. An infant, if he desires to repudiate any voidable contract, must do so within a reasonable time of coming of age. Note Carter v. Silber ((1892), 2 Ch., 278). If an infant repudiates his contract it is submitted that he can recover back his deposit, but the point must be considered doubtful.

Lunatics.—Under Lunacy Act, 1890 (53 Vict., c. 5, sec. 116) a judge may order any property of lunatic to be sold, mortgaged, or otherwise disposed of, in order to raise money for certain purposes.

Note that the Act (sec. 123) prevents a conversion as regards any money that may remain which will still devolve as if there had been no sale. If tenant for life is lunatic, his committee may, under judge's order, exercise the powers of the Settled Land Act in his name and on his behalf.

Solicitor.—Though a purchase by a solicitor from his client may in some cases stand, yet, if instead of purchasing openly, he buys in the name of a third person, concealing the fact that he was the real purchaser, this must vitiate the sale, though in other respects the sale is fair. (McPherson v. Watt, 3 Appeal Cases, 254.)

Convict.—Under 33 & 34 Vict., c. 23, his property vests in an administrator, and he cannot sell or purchase, during sentence, but it would appear that he can make a will, as this only operates on his death. (See Vol. I., pp. 178, 179.)

Corporations can only hold land by license from Crown, or statutory provision. Companies under Companies Act, 1862, may hold land. Any company formed, not for the purpose of gain, cannot hold more than two acres without sanction of Board of Trade.

Recitals in deeds should be simply put ; in special cases they are useful to make matters plain.*

Covenants for title.—Now unnecessary, being implied by Conveyancing Act, 1881, sec. 7, which section should be carefully considered and the particular covenants implied in each case noted.

Where sale by trustees, with consent of tenant for life, he joins and covenants for title, but not as respects the reversion beyond his own acts and acts of persons claiming under him.

Covenant not binding on assignee.—Covenant not to build, &c., entered into by fee simple owner does not run with land being simply a covenant in gross, and therefore a purchaser cannot be bound thereby unless he purchases with notice, actual or constructive, of the covenant ; if, however, he purchases with such notice Equity will restrain him infringing it. (Tulk v. Moxhay, 2 Phil., 774.)

In case of restrictive covenants by purchasers of different lots, to prevent all questions, it is desirable where it is intended that covenants of this kind shall be enforceable, not only by the vendor, but by all the purchasers *inter se*, to have a general deed containing such covenants executed by the vendor and by each purchaser as he completes.

Note that there is generally no implied reservation of an easement in favour of the grantor for the benefit of the property retained by him corresponding to that which arises in favour of the grantee for the benefit of the property conveyed, except in the case of a way of necessity—*e.g.*, if an owner of a house and of land adjoining conveys away the land but retains the house, he cannot prevent the purchaser

* Also see further as to advantage of recitals, 37 & 38 Vict., c. 78, sec. 2 (2), and case of Bolton v. London School Board, 7 Ch. D., 766 ; 47 L. J., Ch., 461 ; 26 W. R., 549 ; also Conveyancing Act, 1881, sec. 3 (3).

of the land from building on the land so as to obstruct the light to the house.

Note that under a conveyance to a Railway Company under 8 Vict., c. 20 (sec. 77) the minerals beneath the land are not included. Observe also that an express grant of right to get minerals does not prevent owner of land from working them also.

Outstanding legal estate must be got in by purchaser unless it has ceased to be existing by reason of the Statute of Limitations. Where a legal mortgage was paid off but no reconveyance was executed it was held that the mortgagee was neither a trustee nor a mortgagee after the money was paid, and that, therefore, after the period prescribed by the Statute of Limitations, all further legal right was barred. (Sands to Thompson, 22 Ch. D., 614; 52 L. J., Ch., 406.)

Costs.—Observe what costs respectively borne by a vendor and by a purchaser. On the purchase of a copyhold estate the purchaser must pay the expense of the surrender and of his admittance. Where vendor agreed to surrender and assure copyholds at his own expense, held that purchaser must pay the fine due on admittance.

Precedent.—Carefully study form of conveyance of freeholds to a purchaser in fee. (Precedent No. 2, page 216.)

MORTGAGES.

Precedents.—Consider ordinary forms of mortgage of freeholds and leaseholds respectively (page 446), and see Precedent No. 1 as to freeholds (page 506), Precedent No. 9 as to leaseholds (page 517). Also see Precedent of a statutory mortgage (Precedent No. 2, page 508), and Precedent of mortgage of copyholds (Precedent No. 7, page 515).

Effect of reservation of equity of redemption to different uses.—This will not usually alter the destination of the

property; thus, if on a mortgage by a tenant in fee the equity of redemption should be reserved to him in tail, yet the land would, subject to the mortgage, revert to him in fee simple in the absence of an evident intention to resettle the estate.

Attornment clause.—No good for purpose of giving a power of distress now (*Re Willis*, 21 Q. B. D., 384; 57 L. J., Q. B., 634); but it is of service in enabling a mortgagee suing in ejectment to specially indorse his writ. (*Mumford v. Collier*, 25 Q. B. D., 279; 59 L. J., Q. B., 552.)

Notice.—After day limited for payment mortgagor must give six months' notice of his intention to pay off, or else pay six months' interest. But this does not ordinarily apply to an equitable mortgage. (*Fitzgerald's Trustees v. Mellersh* (1892), 1 Ch., 385.)

Absolute covenants for title are required from a Mortgagor.

—Reason, because the mortgagee is entitled to the best security, and as the only damages which could be recovered by the mortgagee for a breach of the covenants for title would be the amount due on the mortgage, which the mortgagor is bound in any case to pay, he cannot complain of the unqualified liability.

Insurance.—Always insert in a mortgage express covenant to insure, because amount of insurance thereby fixed, and if then not insured pursuant to covenant the mortgagee's power of sale will arise.

Consolidation.—Refer to case of *Vint v. Padget*, and cases cited in notes in *Indermaur's Conveyancing and Equity Cases*, 7th edition, 96-99.

Specially also note hereon, *Conveyancing Act, 1881*, sec. 17.

Rights against Mortgagee who is paid off.—He may be compelled, not only to convey the mortgaged estate, but also to transfer the mortgage debt. (*Conveyancing Act, 1881*,

sec. 15; and see explanatory and amending provision hereon in Conveyancing Act, 1882, sec. 17.)

Equity of Redemption.—4 & 5 Will. and Mary, c. 16, enacts that mortgagor forfeits equity of redemption by mortgaging a second time, concealing prior mortgage. Note that penal statutes must be construed strictly, and that therefore neither an equitable mortgage by deposit of title deeds, nor a mortgage under a deed in the form of a further charge, without a proviso for redemption, is a second mortgage within the meaning of this Act.

Mortgagor's Powers.—He may distrain for rent and sue for trespass until mortgagee gives notice of his intention to take possession. (Judicature Act, 1873, sec. 25 (5).)

He may, when in possession, make leases under provisions of Conveyancing Act, 1881, sec. 18, unless excluded. He may grant a lease to a trustee for himself.

Whilst in possession he may cut timber, unless the estate without the timber is a scanty security.

He may take growing crops until possession has been demanded by the mortgagee, but not after such demand.

Mortgagee's Powers.—May all be exercised by him at once,* but if after foreclosing he sues on his covenant he must have the estate still in his possession ready to be restored to the mortgagee on repayment, so that if he sells after foreclosure he cannot sue for deficiency.

Remedy of Equitable Mortgagee is foreclosure, James v. James (L. R., 16 Eq., 153; 21 W. R., 522)†; but, if there is

* Note the cases of *Popple v. Sylvester* (22 Ch. D., 98; 52 L. J., Ch., 54), and *Ex parte Fewings Re Sneyd* (25 Ch. D., 338; 53 L. J., Ch., 545), on the point of whether recovering judgment merges the right on the covenant. Generally it must be assumed that it does, but there may, as in *Popple v. Sylvester*, be particular words preventing it.

† See further as to the application of the word "foreclose," and the proper form of the absolute foreclosure judgment as settled under the sanction of the late Master of the Rolls, the case of *Lees v. Fisher* (22 Ch. D., 283; 31 W. R., 94).

a memorandum containing an agreement to execute a legal mortgage, then he may come to the court for foreclosure or sale. (York Union Bank v. Artley, 11 Ch. D., 205.) Note, hereon also section 25 of Conveyancing Act, 1881, under which the Court has always a discretion to order a sale.

Statutory powers to mortgagees.—Note sections 19 and 20 of Conveyancing Act, 1881. These powers may be relied on.

Improper sale.—Purchaser's title will nevertheless be good, unless facts were brought to his knowledge showing that the sale was improper. A sale by a mortgagee is not improper merely because contract to sell entered into before notice expired.

Bankruptcy of mortgagor.—Note provisions of rules 65-69 under the Bankruptcy Act, 1883, under which a mortgagee, whether his security be legal or equitable, may apply to the Bankruptcy Court and obtain an order for sale.

Limitation.—Only six years' arrears of interest can be recovered by action, and this is so in a foreclosure suit, but if a mortgagee has sold he may retain more than six years' interest out of proceeds, and probably in a redemption suit the mortgagee is not limited to six years. An action by mortgagee on the covenant to recover his principal money must be brought within 12 years. (37 & 38 Vict., c. 57, sec. 80; Sutton v. Sutton, 22 Ch. D., 511.) This is so even though there is a collateral bond. (Fearnside v. Flint, 22 Ch. D., 579.) But in an action against a surety who has covenanted to pay, the right of action is not barred until after 20 years. (Lindsell v. Phillips, 30 Ch. D., 291; *Re* Frisby, 43 Ch. D., 106; 59 L. J., Ch., 94.)

Twelve years' uninterrupted possession by mortgagee without acknowledgment is an absolute bar as against mortgagor, and those claiming under him, *although he or they may have been under disability*. (Forster v. Patterson, 17 Ch. D., 132; 50 L. J., Ch., 603.)

An acknowledgment given *after* the expiration of 12 years cannot revive mortgagor's rights. (Sanders v. Sanders, 19 Ch. D., 373; 51 L. J., Ch., 276; 30 W. R., 280.)

Mortgagee's powers.—Note section 18 of Conveyancing Act, 1881, as to granting leases.

Mortgagee is entitled to open mines if security insufficient.

Mortgagee may cut and sell timber (not ornamental) under section 19 of Conveyancing Act, 1881. If mortgage deed executed before 1st January, 1882, he can only do this if security insufficient. *not*

Annual rests.—Only made generally when interest ⁱⁿ arrear at time mortgagee entered into possession, but note that a mortgagee of leaseholds may take possession when there are no arrears of interest, under circumstances which may not render him liable to account with annual rests, as if he enters in order to prevent a forfeiture for non-payment of ground rent, or non-insurance.

Real Estate Charges Acts, 1854, 1867 and 1877.—Note the provisions of these Acts, commonly known as "Locke King's Acts." (17 & 18 Vict., c. 113; 30 & 31 Vict., c. 69; and 40 & 41 Vict., c. 34.)

Acquirement of legal estate.—Note that the protection afforded by acquirement of the legal estate extends to cases where the vendor or those from whom he claims, is or are guilty of gross fraud. (Refer to instances given in Vol. I., pp. 479, 480.)

Observe that a mortgage is but a security for a debt, and consequently that the interests of persons claiming under a mortgage in the land comprised therein are regulated by their interests in the debt for which the land is a security, and therefore if there is no debt so that the transferor had nothing, neither can the transferee have anything either. (Refer to instances, Vol. I., pp. 482-484.)

Tacking.—Third mortgagee taking conveyance of legal estate from first mortgagee who has been previously paid off is *not* protected, for when he was paid off he became a trustee for the second mortgagee, and it is a breach of duty in him to convey the legal estate to the third, who, being aware of such breach of duty, will not be allowed to profit thereby.

Notice.—Note provisions of Conveyancing Act, 1882, sec. 3. (Vol. I., p. 486.)

Persons not getting deeds handed over will be charged with constructive notice of any incumbrance, unless under special circumstances.*

Note that a purchaser or mortgagee should require a reasonable title, and if he does not get it will be affected with constructive notice of the contents of any deed forming part of the chain of title. This is so notwithstanding the provisions of the Vendor and Purchaser Act, 1874, as regards not going behind original lease. (Patman v. Harland, 17 Ch. D., 353.)

Where assignee, beyond being a beneficiary, is also a trustee, the notice to him is nevertheless a valid notice.

Note specially that it has been decided that notice to solicitor of trustees is not sufficient notice to the trustees, unless such notice is in fact communicated by him to the trustees. (Saffron Walden Benefit Building Society v. Rayner, 14 Ch. D., 696; 49 L. J., Ch., 465; 28 W. R., 681.)

If an assignee or incumbrancer gives notice to trustees who are afterwards changed, he runs the risk of having the trust property distributed without reference to his claim, as the new trustees are not bound to inquire of the old trustees as to what notices they have received. Therefore, if possible,

* See hereon Agra Bank v. Barry, Indermaur's Conveyancing and Equity Cases, 7th edition, 116-119.

get notice indorsed on original trust deed, or if the property consists of stock or shares, put on a *distringas*.

Risks attending second mortgage.—(1) Possible postponement to a prior equitable mortgage; (2) Tacking; (3) Consolidation. Observe if a person does advance on a second mortgage what precautions he should take. (Vol. I., p. 492.)

A trustee in bankruptcy to whom an outstanding fund or property of bankrupt passes, will lose his right by omitting to give notice of his title, and will be postponed to a subsequent assignee for value without notice of the bankruptcy. (*In re* Bright's Settlement, 13 Ch. D., 413; 28 W. R., 551.)

Note recent case of *Low-v. Bouverie* (1891), 3 Ch., 82, deciding that trustees not bound to answer enquiries as to incumbrances created by *cestuis que trustent*, and that if they do answer them honestly for they are not liable for errors.

Observe when a *distringas* and a stop order respectively should be obtained to complete a mortgagee's security. (Vol. I., p. 496.)

Object of making mortgagor a party on transfer of mortgage.—So that he shall admit the amount of the mortgage money; if he is not a party, transferee takes subject to all equities between mortgagee and mortgagor, and all rights of mortgagor to call state of accounts in question.

Copyholds.—Note plan to be adopted on a transfer of mortgage of copyholds, observing distinction according to whether the mortgagee has or has not been admitted.

Stamps.—2s. 6d. per cent. on a legal mortgage; 1s. per cent. on an equitable memorandum of deposit.

REGISTRATION OF TITLE.

Registration under Land Transfer Act, 1875, is voluntary.

Land may be registered with an absolute, possessory, or qualified title. Forms are provided for charges and transfers of registered land, which are entered on the register. No notice of any trust can be entered on register, and no person can be registered as the proprietor of an undivided share.

If title registered as absolute the registration is generally conclusive evidence of title.

An abstract on sale or mortgage of registered land consists of copy of the land certificate, and copies or abstracts of any documents referred to, but not set out at length on the register. In the case of registered leaseholds the abstract comprises the lease and entries on the register.

Equitable mortgage is made by a deposit of the land certificate.

If a registered proprietor desires to make a disposition of some estate or interest, not being a disposition of the whole fee simple or whole leasehold interest, it is done by an unregistered deed just as if the land was not registered.

BILLS OF SALE.

Bills of Sale Act, 1882.—Applies to bills of sale given on or after 1st November, 1882, by way of security for money. With regard, however, to bills of sale before this date, though the Act does not apply to them strictly, yet it has been decided that seizure can only be made on the events specified in sec. 7 of the Act of 1882 (*ex parte* Cotton, 11 Q. B. D., 301; 32 W. R., 58.)

Observe specially the essentials under this Act as detailed in Vol. I., pp. 711-720, and particularly note the importance of observing in substance the form of bill of sale given by the Act (Precedent No. 3, p. 740). (See hereon *Davis v. Burton*, 11 Q. B. D., 537; 52 L. J., Q. B., 636; *Melville v. Stringer*, 13 Q. B. D., 392; 53 L. J., Q. B., 482; *Hether-*

ington v. Groome, 13 Q. B. D., 789; 53 L. J., Q. B., 577.) The insertion in a bill of sale of the words "as beneficial owner" invalidates a bill of sale (Re Barber, 17 Q. B. D., 259; 55 L. J., Q. B., 341.) Further hereon note Cochrane v. Entwistle (25 Q. B. D., 116; 59 L. J., Q. B., 418), deciding that bill of sale void if schedule includes any property besides personal chattels, *e.g.*, the mortgagor's interest in a farm where the chattels are.

Transfer of registered bill of sale need not be registered.

First unregistered and then registered bill of sale.—The registered bill of sale prevails, the unregistered one being altogether void.

Future property cannot be assigned, except as against the grantor, but there are two exceptions in which it may be assigned—(1) growing crops; (2) fixtures, &c. There must be no mention of future acquired chattels in the body of the bill of sale. (Thomas v. Kelly, 13 App. Cas., 506; 58 L. J., Q. B., 66.)

* *Seizure*.—Learn up the five events on which only seizure under a bill of sale now valid and case of *ex parte* Cotton (11 Q. B. D., 301; 32 W. R., 58).

After seizure goods must be allowed to remain five days, and summary application may be made to a judge to restrain removal during that time.

The Bills of Sale Act, 1882, does not apply to a pledge as distinguished from a mortgage, and therefore if goods are deposited with a lender, and at the same time a document is signed recording the transaction, and regulating the rights of the pledgee, this is not a bill of sale.

Note that a *genuine* hire-purchase agreement is not a bill of sale.

Order and disposition clause in Bankruptcy Act, 1883, only applies to goods used by a person in his trade or business.

If the goods are of this description, then the clause applies to render valueless even a registered bill of sale given as security for money, if the goods are in the grantor's possession at the time of his bankruptcy. But observe particularly that goods comprised in a bill of sale given otherwise than as security for money are not within this rule, for sec. 3 of the Bills of Sale Act, 1882, limits the repeal of sub-sec. 15 of sec. 20 of the Bills of Sale Act, 1878, to bills of sale given by way of security for money. (*Swift v. Pannell*, 24 Ch. D., 210; 53 L. J., Ch., 342; *Ex parte Izard*, 23 Ch. D., 409; 52 L. J., Ch., 802.)

Amount of bill of sale to secure money must not be less than £30.

Fixtures.—If mortgage of premises made with fixtures thereon, registration not required unless the fixtures consist of trade machinery, as defined in the Act of 1878, when registration always necessary.

Consideration for bill of sale must be truly set forth. When money paid to creditor of the grantor, it is sufficient to state in bill of sale that it is paid to grantor. (*Ex parte Bolland*, 21 Ch. D., 543; 31 W. R., 102.) But it is otherwise if part of money retained for other purposes, *e.g.*, to pay the costs of preparing the bill of sale. (*Ex parte Firth*, 19 Ch. D., 419; 51 L. J., Ch., 473; 30 W. R., 952.)

Sufficient description of grantor, and of attesting witness, must be specially attended to.

Marriage settlement.—Ante-nuptial settlement need not be registered.

Marriage is a valuable consideration, but if the marriage is made part of a scheme for defeating creditors, the instrument is void, under 13 Eliz., c. 5.

Act of Bankruptcy.—Bill of sale is one, if of whole of grantor's property for a past debt, unless there is a substantial exception, *e.g.*, book debts which are considerable

in their amount. Not an act of bankruptcy, if given in pursuance of an agreement made when the money was advanced.

VOLUME II.

LEASES.

Definition of Lease.—An assurance or contract whereby land or any other thing capable of being demised is let by one person to another for an interest less in point of duration than the lessor has therein.

Notice to determine.—Half a year expiring at end of current year of tenancy, but if tenancy under Agricultural Holdings Act, 1883, then one year. Notice to quit is *prima facie* waived by acceptance, or even demand of rent after expiration of the notice, but the presumption of waiver may be rebutted. (See Vol. II., p. 29.)

Tenant holding over after the expiration of his lease becomes a tenant at sufferance until payment of rent yearly, half-yearly, or quarterly, when he becomes a tenant, from year to year, on such of the terms of the lease as are applicable to a yearly tenancy. If a tenant holds on after the expiration of his own notice to quit he is liable to pay double the yearly rent. (11 Geo. II., c. 19, sec. 18.) If landlord gives notice in writing to quit, and tenant holds over he is liable to pay double yearly value (4 Geo. II., c. 28, sec. 1), but the holding over must be contumacious. (Swinfen v. Bacon, 30 L. J., Ex., 33, 368; see Vol. II., p. 34.)

Instrument void as a lease by not being under seal, under 8 & 9 Vict., c. 106, may be sued on as an agreement for a

lease. Specially note the case of *Walsh v. Lonsdale* (21 Ch. D., 9; 52 L. J., Ch., 2; 31 W. R., 109), deciding that since the Judicature Acts the rule no longer holds good that a person occupying under an executory agreement for a lease, is only made tenant from year to year at law by the payment of rent, but that he is to be treated in every court as holding on the terms of the agreement.

Option to yearly tenant to have a lease continues until a landlord calls on tenant to determine it. If landlord agrees not to turn tenant out so long as he pays rent, this is binding as long as the landlord's interest continues, and during the tenant's life, but no further.

Distress may be for six years' rent, and if lease has determined it may be made within six calendar months from its determination, provided landlord's title continues and tenant still in possession. (8 Anne, c. 14, secs. 37, 38.) The executors of a deceased landlord have the same right of distress for rent accrued in his lifetime as the landlord would have had if living. (3 & 4 Will. IV., c. 42, secs. 37, 38.)

If tenant clandestinely removes goods to prevent distress, landlord may follow them within thirty days. (11 Geo. II., c. 19.) But note the case of *Gray v. Stait* (11 Q. B. D., 668; 52 L. J., Q. B., 412), deciding that this only applies where the goods would have been distrainable if they had remained on the premises, and cannot be exercised if at the time of seizure the tenancy has determined.

Protection of lodger's goods under 34 & 35 Vict., c. 79.—To constitute person a lodger the superior landlord must retain some possession or control over the premises, *e.g.*, having a room in the house. (*Phillips v. Henson*, 3 C. P. D., 26; 47 L. J., C. P., 273; see also *Morton v. Palmer*, 51 L. J., Q. B., 7; 30 W. R., 115.)

Note what are usual covenants in a lease. (Vol. II, p. 10.)

In covenant to pay all rates, taxes, &c., property or income tax is excepted. The addition of the word "assessments" makes covenant more comprehensive, and includes payments tenant would not but for it be liable to make, *e.g.*, sewers rate and land tax, provided that the covenant is to pay all rates, taxes, assessments, &c., imposed *on the landlord* or tenant in respect of the premises. (*Budd v. Marshall*, 5 C. P. D., 481; 50 L.J., Q. B., 24; 29 W.R., 148; *Allum v. Dickinson*, 9 Q. B. D., 632; 30 W. R., 930.) It does not, however, include tithe rent charge.

Waste.—A tenant is *practically* not liable for alteration in premises which do no injury to the inheritance.

Repairs.—Yearly tenant must keep premises wind and water tight, nothing more, and it appears a tenant for a term of years is in same position in the absence of any covenant. Neither are liable for permissive waste.

Under a general covenant to repair, the class and description of the house may be taken into account, and it must be kept and delivered up in good repair with reference to the class to which it belongs. If tenant has covenanted to repair he is liable to rebuild in case of fire, unless this is excepted. Under an absolute covenant to pay rent without any exception he is also liable to pay rent during period premises are uninhabitable by reason of fire.

Landlord not bound to do repairs in absence of covenant. In the case of a furnished house, however, there is always an implied covenant or warranty that it is reasonably fit for occupation. (*Wilson v. Finch Hatton*, 2 Ex. D., 336; 46 L. J., Ex., 489.)

Refer to instances of breaches of covenants not to carry on certain trades, &c. (Vol. II., pp. 16, 17.)

Covenant not to assign.—This does not prevent a bequest, nor a deposit by way of security, nor involuntary alienation by bankruptcy, &c., and the lease having thus come into the

possession of a trustee in bankruptcy the covenant does not bind him. An underlease is not a breach of a covenant not to assign. An assignment by one of two joint tenants to the other is a breach of such a covenant.

A covenant not to assign without license, is not a strictly "usual" one, but if a person agrees to purchase a lease, the mere fact that it contains such a covenant is no defence to an action for specific performance. Any tenant in assenting to such a covenant should have it qualified by proviso that license not to be unreasonably withheld, and if landlord then refuses license unjustifiably, lessee may assign without it.

Proviso for re-entry on non-payment of rent is a usual and proper proviso where there is an agreement for a lease to contain usual covenants and conditions, but not a proviso for re-entry on breach of any other covenant. (Hodgkinson v. Crowe, L. R., 10 Ch., 622; 42 L. J., Ch., 680.)

Under this proviso for re-entry, demand is necessary unless lease provides to the contrary. Note, however, now provision of Common Law Procedure Act, 1852, sec. 210, under which landlord can distrain, if no sufficient distress on the premises and half a year's rent in arrear.

Note particularly provisions of Conveyancing Act, 1881, sec. 14, giving power to court to relieve in cases of breaches of covenants in lease, and exceptions thereto (sub-sec. 6), particularly covenant not to assign without license. If a tenant even unwittingly breaks this covenant he is liable to be ejected. (Barrow v. Isaacs, 60 L.J., Q. B., 179; 64 L.T., 686.) This provision does not affect the law relating to re-entry or relief in case of non-payment of rent. The enactments of the Act hereon are retrospective and apply notwithstanding any provision to the contrary.

Apportionment of rent, &c.—Rent at common law follows the reversion, and is apportionable on a partial alienation,

and by 22 & 23 Vict., c. 35, sec. 35, assignee of part of reversion has when rent legally apportioned, full powers of re-entry for non-payment of rent. By 32 Henry VIII., c. 34, benefit and liability under covenants and conditions pass on any assignment of reversion. Now under Conveyancing Act, 1881, secs. 10-12, as regards leases made after 31st December, 1881, these provisions are enlarged, and assignee of reversion or part of reversion has now full benefit of all conditions and covenants in the lease.

Surrender of a lease by operation of law takes place if tenant accepts a new lease.

Emblements.—If tenant in fee dies intestate administrator entitled to crops but heir to land. If, however, land devised, the crops also pass to devisee without express mention.

Fixtures.—See Vol. II., pp. 35-39, and see Elwes v. Mawe, and notes in Indermaur's Common Law Cases, 7th edition, pp. 75, 76. Note that under the Bankruptcy Act, 1883, sec. 55, a trustee, after removing fixtures, may still disclaim, but of course the consent of the court would have to be obtained.

Improvements.—Note provisions of Agricultural Holdings Act, 1883, hereon, as well as on fixtures, distress for rent, and other points. As regards improvement observe that there are three classes. As to Class I., to entitle the tenant to compensation consent in writing of landlord must have been obtained; as to Class II., no consent necessary but previous notice must have been given; as to Class III., neither consent nor notice necessary.

Leases made under powers.—The power must be strictly followed. However, if not, under 12 & 13 Vict., c. 26, if tenant has entered, it is a contract for a valid lease, but reversioner may confirm it as it stands. 13 & 14 Vict., c. 17, provides that the confirmation must be in writing.

Leases by statute.—The important present statute hereon

is the Settled Land Act, 1882, as subsequently amended. (See Epitome of Act, *post*, p. 95.)

The terms of leases under the Settled Land Act, 1882, sec. 6, are:—Building lease, 99 years, mining lease, 60 years, and any other lease, 21 years. Note special terms and conditions of such leases (sec. 7), special regulations regarding building and mining leases (secs. 8, 9, 11), and general power with court's sanction to vary length of building and mining leases, and even grant same in perpetuity if customary or beneficial (sec. 10). Previously to making lease, tenant for life must give notice to trustees of settlement and their solicitors (sec. 45), which, however, may now, under the Act of 1884 (sec. 5), be waived, and notice of a general intention to lease is also made sufficient. Under Settled Land Act, 1890 (sec. 7), the notice is not necessary in the case of a lease for 21 years. Prohibition or limitation against these powers of tenant for life are void (sec. 51).

The provisions of the Act of 1882 apply not only to settlements since, but also prior to the Act (sec. 2, sub-sec. 1).

Leases by ecclesiastical persons and bodies.—These are regulated by various statutes and must not be for more than 21 years, or three lives, except as regards houses in towns, which may be demised for 40 years, and incumbent must obtain the confirmation of the patron and ordinary in order to bind successor.

Quiet enjoyment.—Covenant for, is implied in a lease, by use of word “demise,” but, in the interests of both lessor and lessee, it should not be relied on, as it ceases with the lessor's estate, and is also too general.

Boundaries.—A tenant must not during tenancy confuse the boundaries, and if he does the court has power during the tenancy as well as at the end of it to direct an enquiry to ascertain the boundaries.

TRUSTEES.

Bare trust defined.—It is a trust where the instrument imposes no duty beyond that implied by law from the bare relation of trustee and *cestui que trust*. An active trust will become a bare trust when all the special duties have been performed or otherwise come to an end.

Duties of trustees for sale.—They must use diligence to obtain the best price, and take care to satisfy themselves as to the value of the property before they proceed to a sale. Unless authorised to defer sale, their duty is to sell as soon as they conveniently can.

Trustees may sell in one lot or in several lots. They should sell under proper conditions, and not under an open contract ; but they must not make conditions unnecessarily stringent, and if they sell under depreciatory conditions they are liable to their *cestui que trust* for any loss. Still, though they have so sold, the purchaser is safe, and cannot, in fact, resist specific performance. (Trustee Act, 1888, 51 & 52 Vict., c. 59, sec. 3.)

A trust to sell within a given time will not preclude trustees from selling after that time if the nature of the trust requires that there must certainly be a sale, notwithstanding the lapse of time, either by the trustees or the court.

Note that now under sec. 56 of the Settled Land Act, 1882, the consent of the tenant for life of a settlement is necessary to the exercise by the trustees of any powers given them by the settlement of the same nature as any of the powers conferred by the Act. (See hereon *Re Duke of Newcastle's Estates*, 24 Ch. D., 129; 52 L. J., Ch., 645.)

Surface and minerals.—Under 25 & 26 Vict., c. 108, trustees, by sanction of court obtained on petition, may sell lands and minerals separately, and under the Settled Land

Act, 1882 (sec. 17), this may always be done in sales taking place as provided by the Act, so that the former Act, though still in force, is now practically superseded.

Mortgaging under a power of sale.—This is allowed if the design of the power is to raise money and not to convert.

Discretionary power of sale.—Freehold, leased with discretionary power to tenant to buy, retains quality of real estate until option of purchasing is exercised.

Breach of trust.—A trustee in selling the trust property conjointly with other property is not guilty of a breach of trust, provided it is prudent thus to sell, and he takes all reasonable precautions. If trustee in selling commits a breach of trust purchaser is protected if he had no notice of breach, for he gets the legal estate. But if sale is not actually completed the court will not decree specific performance, and will, even at the suit of the *cestui que trust*, restrain the trustee from carrying the sale into effect, leaving the purchaser to any remedy he may have against the trustee for damages.

Receipts of trustees.—Trustees' receipt always sufficient for purchaser, or any one dealing with trustees. (22 & 23 Vict., c. 35, sec. 23; Conveyancing Act, 1881, sec. 36.) All the trustees must join in receipt unless they have specially given them a joint and several power. Under the Trustee Act, 1888, sec. 2, a trustee may delegate his solicitor to receive purchase or other money if he executes deed with receipt thereon, and so also as regards money payable under a policy of assurance he may delegate receipt to his solicitor or banker.

Executor may make a good title to testator's chattels real even though they are specifically bequeathed.

Note that trusts or powers of sale vested in trustees of settled land are subordinate to powers of tenant for life

under the Settled Land Act, 1882, except as regards cases coming within sec. 63. Consider this section, and the amending provisions of the Settled Land Act, 1884, sec. 6.

Survivor of trustees formerly could not exercise powers given to several trustees only, but now in trusts governed by Conveyancing Act, 1881 (sec. 38), this is otherwise unless the contrary is expressed.

Trustee buying of cestui que trust.—Though not generally allowed, it may be, under special circumstances, as where *cestui que trust* was *sui juris*, and took upon himself the whole management of the sale. (Coles v. Trecothick, 9 Ves. 246.)* A disclaiming trustee may purchase from acting trustee. A tenant for life of a settled estate which is being sold, can buy, unless it is a sale by himself under the powers conferred by the Settled Land Act, 1882, sec. 53, when he cannot.

Trustees' powers of investment.—This matter is now governed by the Trust Investment Act, 1889, (52 & 53 Vict., c. 32; see Epitome, *post*, p. 116.) Particularly note sec. 4 with regard to the power of trustees to purchase redeemable stock then standing at a premium.

Observe provisions of Trustee Act, 1888, sec. 4 (see Epitome, *post*, p. 111), as to trustees' investments on mortgage. Particularly note that they should have property surveyed, and not advance more than two-thirds. Further observe sec. 5, providing that if they do advance more than two-thirds they are only liable to make good the excess advanced beyond the two-thirds.

Trustees must not invest on a contributory mortgage.

Discretion in investments.—However absolute a discretion

* A trustee should not, however, rely on this, but if he desires to purchase, should get the consent of the court by means of a summary application under Order LV., rule 3.

may be given to trustees, they must act reasonably and with prudence, so that they must not invest on personal security, or in any hazardous stock bearing a high rate of interest, and which cannot be considered permanent.*

Liability of trustees for default of persons employed by them.—They are not liable for money temporarily and reasonably placed with bankers who fail, nor for goods entrusted to a tradesman to sell where he fails, nor for the fraud of a broker who has embezzled money given to him for investment. (Speight v. Gaunt, 22 Ch. D., 727 ; 9 App. Cas., 1.) They are, however, said to be liable for a loss occasioned by the fraud of their solicitor, but probably if the money was entrusted to him in a proper way, and at a proper time, on the authority of the case just mentioned, it would be now held otherwise. (See hereon Vol. II., p. 198.)

Loss on investment.—If there is a loss it must be apportioned between tenant for life and remainderman. Note the principle and mode of such apportionment. (Vol. II., p. 199.)

If loss occasioned by reason of breach of trust committed at request of beneficiary the beneficiary's interest may be impounded to make it good; and this even though the beneficiary is a married woman without power of anticipation. (Trustee Act, 1888, sec. 6.)

Disclaimer.—Trustees may disclaim, but not after they have accepted trusts. If they are also executors, proving the will is an acceptance of the whole of the trusts, but the converse does not hold good, so that renouncing the executorship does not of itself amount to a disclaimer of trusts. It is always advisable to disclaim by deed, but a disclaimer may be by conduct as well as by deed.

* If a trustee feels himself in doubt as to whether under his discretionary powers he would be justified in making a certain investment, he can apply by originating summons under Order LV., rule 3.

Appointment of new trustees.—Not necessary now to insert powers, provisions of Conveyancing Act, 1881 (sec. 31), being very ample. Note, particularly in sec. 31 (sub-sec. 1) the events on which the power arises. This provision is retrospective. If this section does not apply, the Court has power to appoint new trustees under the provisions of the Trustee Act, 1850 (13 & 14 Vict., c. 60).

Retirement of trustees.—This could formerly only be by consent of *cestuis que trustent*, or of court, but now trustees may, if there are more than two trustees, retire with consent of co-trustees and such other person (if any) as is empowered to appoint trustees. (Conveyancing Act, 1881, sec. 32.)

Trustee Relief Act (10 & 11 Vict., c. 96).—The owner of land charged with a legacy cannot pay amount of legacy into court under this Act, but he may do so under sec. 5 of Conveyancing Act, 1881. Money payable under a policy of life assurance is not money held upon a trust, nor is money deposited with a banker, but if it is paid in such cases, and party petitions, he cannot object to the irregularity of paying in.

Duty of bare trustee.—To convey legal estate to persons entitled to it.

Remainderman's rights to production of deeds in possession of tenant for life.—If a vested remainder such a right exists, but not if the remainder is contingent.

Trustee who is a solicitor or auctioneer cannot charge for his professional services. One of several trustees who is a solicitor may be employed by his co-trustees in any matter of litigation, but not in the administration of the estate out of court. (Cradock v. Piper, M. & G. 664; 15 L. T. Rep., 61; *Re Corsellis*, 34 Ch. D., 675; 56 L. J., Ch., 294.).

Statute of limitations.—This plea may be now set up by a trustee under the Trustee Act, 1888 (sec. 8) except when the claim is founded on fraud or on fraudulent breach of trust.

HUSBAND AND WIFE.

Observe the statement of the effect of the different Married Women's Property Acts (Vol. II., pp. 217-221.)

Courtesy.—Husband entitled to courtesy out of wife's separate estate in land. (Hope v. Hope (1892) 2 Ch., 336.)

Courtesy not allowed out of estates in remainder unless they fall into possession during coverture. It does attach to an equity of redemption and to an estate tail. No courtesy in copyholds except by special custom.

Irrespective of the Married Women's Property Act, 1882, a *chose in action* which cannot by possibility fall into possession during husband's life cannot be assigned by him so as to prevent wife's right by survivorship.

Reversionary interest of wife in personalty cannot be made an interest in possession so as to give husband rights over same, by means of release of prior interest. As to disposal of such reversionary interests now, note Malins Act, (20 & 21 Vict., c. 57), which, however, only applies to interests under instruments executed after 31st December 1857.

Note that of course now in all cases of property coming to a woman on or since 1st January, 1883, or when she has been married since that date, it is to her separate use whether in possession or reversion, and can always be disposed of by her alone.

Equity to a settlement may be released by a deed acknowledged under 20 & 21 Vict., c. 57, but this subject is of little importance since the Married Women's Property Act, 1882.

Separate estate.—Irrespective of Married Women's Property Act, 1882, to give separate estate to married women, words must be used showing intention to exclude husband. The word "sole" by itself will not have that effect. Note particularly now the Act of 1882. Clause against anticip-

pation still allowed under this Act (sec. 19), but see hereon Conveyancing Act, 1881 (sec. 39), and generally hereon see *Tullett v. Armstrong* (*Indermaur's Conveyancing and Equity Cases*, 7th edition, pp. 87-90.)

If wife lets husband receive income from her separate estate, it amounts to a gift to him, but this is not so with regard to corpus.

Married women may now act as a trustee or executrix and husband no right to intermeddle, and he is free from liability for her acts in such capacity.

Restraint on anticipation contained in a marriage settlement of property of wife's, has no validity against debts contracted by the wife before marriage.

A married woman can, if trading apart from husband, be made a bankrupt to the extent of any separate property. This does not include a power of appointment over property. (*Ex parte Gilchrist*, 17 Q. B. D., 521; 55 L. J., Q. B., 578.)

Judicial separation makes woman with regard to property in the position of a *feme sole*, and on her decease, should she die intestate, her property will go as if her husband were dead.

Note powers of Divorce Court after divorce or judicial separation to order settlement of property for innocent party and children. Also after divorce but not after judicial separation to enquire into and vary existing settlements, and that in consequence of 41 Vict., c. 19, this power exists now, notwithstanding there are no children of the marriage.

Precedents.—Consider thoroughly the two following settlements: No. 1 (p. 292) as to personalty, and No. 28 (p. 373) as to realty. Note that the former is substantially a business man's or trader's proper settlement on marriage, and the latter is a strict settlement by a landed proprietor. In this latter observe particularly what are the strict uses, and then how the wife and the younger children are provided for.

SETTLEMENTS.

Generally hereon, observe now that if desired simply to give wife absolute property utterly beyond husband's control, settlement not necessary, on account of the Married Women's Property Act, 1882, but if desired to restrain her from anticipating or to make provision for children, then settlement necessary. A settlement on marriage should, therefore, still always be advised.

Note the effect in a settlement of a gift over on alienation or bankruptcy; observe hereon the distinction according to whether the property comes from the settlor or from some other source. (Vol. II., pp. 250, 251.)

Maintenance.—Note that the clause as to maintenance, which used to be inserted as a common form in settlements may now safely be omitted, having regard to sec. 43 of Conveyancing Act, 1881, which applies to instruments coming into operation either before or after the commencement of the Act. An advancement clause still necessary.

Note that in a settlement of personalty the ultimate trust should be in favour of the persons who would have taken under the Statutes of Distribution if the party had died intestate *without having been married*.

Covenant to settle after acquired property does not include property the woman then had in possession, but it does include reversions she then had if they afterwards fall into possession during coverture. It includes property to the separate use of married woman, if the covenant is not merely by husband but by her. It does not bind property which the wife is restrained from anticipating. If wife at time of settlement an infant, the covenant does not absolutely bind her; but if she takes any benefit from her husband under the settlement, she will be put to her election, unless by the terms of the instrument she is restrained from anticipating.

Note that where a person gives to a married woman who

has entered into such a covenant an interest in property of such a nature as to come within its terms, any declaration of the donor's intention that the property shall not be affected by the covenant is inoperative.

A covenant by a husband to settle after acquired property not usual.

Where realty is settled, not in strict uses, but so that children to take equally, the proper plan is to convey it to trustees in trust for sale.

Observe that an estate cannot be kept in a family in strict line of descent merely by force of the statute *De Donis*, but it is done by a process of re-settling it generation after generation as the eldest son comes of age.

Settled Land Act, 1882.—With regard to settlements, note generally the powers conferred on tenants for life by this Act, and particularly as to leasing (see *ante*, p. 29), and also as to sales (secs. 3 and 4), and particularly observe the following points :—

General regulations as to sale, best price, &c. (sec. 4).

Separate dealing with surface and minerals allowed (sec. 17.)

Application of capital moneys arising from any sale (sec. 21.)

Moneys arising from sale of lands in England cannot be invested in land out of England (sec. 23).

Capital moneys arising from any sale may be applied in certain improvements (sec. 25) subject to special conditions (sec. 26). See Epitome of the Act and the subsequent amending Statutes, *post*, p. 94. Consider summary of points decided under the Settled Land Acts. (Vol. II., pp. 273-277.)

Compounding claims, &c.—Two or more trustees together may now do this, or a sole trustee may, when only one appointed. (Conveyancing Act, 1881, sec. 37.)

18 & 19 Vict., c. 43.—Under this Act settlements may be sanctioned by the court by males at the age of 20 and females at the age of 17. Before approving a settlement by an infant, who is not a ward of court, under this Act, the court will not direct an enquiry as to the propriety of the contemplated marriage. The powers of the court may be exercised even after marriage.

Voluntary settlements.—Strangers or collaterals provided for by limitations in a marriage settlement are not usually within the marriage consideration, and are volunteers.

A settlement of leaseholds, where they are subject to any rent or covenants, cannot be considered voluntary under 27 Eliz., c. 4. (Price v. Jenkins, 5 Ch. D., 619; 46 L. J., Ch., 805.) But this doctrine does not apply as against creditors under 13 Eliz., c. 5. (Ridler v. Ridler, 22 Ch. D., 74; 31 W. R., 93.) Note that in the case of a post-nuptial settlement, a very slight consideration is sufficient to support a post-nuptial consideration, so as to take it out of 27 Eliz., c. 4.

Subsequent creditors may set aside a voluntary settlement under 13 Eliz., c. 5, if it was made when settlor about to embark in some hazardous enterprise, though he was perfectly solvent at the time. (Mackay v. Douglas, L. R., 14 Eq., 106; *ex parte* Russell, *re* Butterworth, 19 Ch. D., 588; 51 L. J., Ch., 521.) So also subsequent creditors may upset a prior voluntary settlement if they can show that their money has gone to pay off creditors, who were creditors at the time of the settlement, and who might, therefore, have called it in question. In other words they are allowed to stand in their shoes. (Freeman v. Pope, L. R., 5 Ch., 538.)

Solicitor for voluntary settlor should usually point out to his client that it is not revocable unless power of revocation inserted, but his not doing so will not necessarily enable settlor to come to the court to revoke settlement;

it is only a circumstance to be weighed with others, which perhaps together may enable the court to give relief on the ground of accident or mistake.

Observe that a voluntary assignment of property to trustees in trust for the benefit of creditors who do not execute and are not privy to the deed, operates merely as a power or mandate to the trustees, which may be revoked by the debtor.

Stamps.—A settlement of money, stock, &c., is stamped with *ad valorem* duty of 5s. per cent. If a life policy is settled *ad valorem* duty is only paid on the surrender value, unless the settlement contains a covenant to keep up the policy when the duty is paid on the full amount assured to be paid on death.

CHARITY DEEDS.

Consider what is included by the word "charity" in the legal sense of the term. (Vol. II., p. 429.)

The Mortmain Act, 1888 (51 Vict., c. 42) now governs the subject of formalities to be observed as regards disposition for charities. Note the proper formalities. (Vol. II., pp. 430, 431.)

As regards the powers of charity trustees note that no sale, or mortgage, or lease for more than 21 years, can be made without the express authority of Parliament, or of the court, or a judge of competent jurisdiction, or according to a scheme legally established, or with the approval of the Charity Commissioners.

WILLS.

Prior to 1 Vict., c. 26, though will of personality spoke from date of death, will of realty only spoke from date of making. Also though infant could not make a will of realty, infant could of personality, female at age of 12 and male at age of 15, if proved to be a person of discretion.

Prior to Married Women's Property Act, 1882, will made by a woman during coverture by consent of her husband would not pass property she acquired after his decease. (Noble v. Willock, L. R., 8 C. A., 779.) And it has been held that this is still so, notwithstanding the Married Women's Property Act, 1882. (*Re Price*, Stafford v. Stafford, 28 Ch. D., 709; 54 L. J., Ch., 509.)

Traitors and felons it would appear may make a will.

Gift to a class as joint tenants.—If one of these attest the will, the whole goes to the other members of the class.

Legacy to an attesting witness is rendered valid by a codicil confirming the will attested by other witnesses. If two codicils, and by first one legacy given to one of its attesting witnesses, second codicil attested by other witnesses will not render the legacy valid unless the first codicil is specially mentioned and confirmed.

Dependent relative revocation.—This means revoking one will with intention of giving effect to another one. If this other one cannot have effect given to it, the revocation does not operate.

A revoked will cannot be revived by implication. If a person makes a will revoking a prior one and then destroys the latter one the first is not revived. This would raise a case of dependent relative revocation if intention was to revive the prior one.

If after making a will dealing with certain property the testator contracts to sell such property the devise is revoked so that money payable under the contract will pass as part of testator's personal estate.

Though a will now speaks from date of death, there may be cases of contrary intention, when it will be otherwise. (See instances, Vol. II., pp. 480, 481.)

General devise, or bequest, will pass property over which testator had general power of appointment, but not pro-

property over which he had only a special power, unless will expressed to be made in pursuance of all powers vested in testator, and the gift is wholly or substantially in favour of persons who are objects of the power.

Trust and mortgage estates now in the case of persons dying on or after 1st January, 1882, always go to personal representatives (Conveyancing Act, 1881, sec. 30), except they are copyholds, when it is otherwise, for the Copyhold Act, 1887 (50 & 51 Vict., c. 73, sec. 45) repeals sec. 30 of the Conveyancing Act, 1881, as regards copyholds. (As to position in cases in which sec. 30 of Conveyancing Act, 1881, does not apply, see Lord Braybroke v. Inskip and notes in Indermaur's Conveyancing and Equity Cases, 7th edition, pp. 46-48.)

Legal estate.—If property devised to use of trustees this vests legal estate in them, but otherwise it depends on whether they have any active duties to perform. Under 1 Vict., c. 26 (secs. 30 and 31), if there is no express limitation of the estate to be taken by the trustee, and yet there are purposes which require that he should take some estate, he must take either an estate for life or an estate in fee simple. (See examples illustrating this enactment in Vol. II., p. 492.)

Specific legatee takes property subject to any charge naturally existing on it; but he has a right to have it exonerated from any charges created by testator. It is otherwise, however, as regards a bequest of leaseholds since 40 & 41 Vict., c. 34.

Note when a legacy bears interest. With regard to the subject of vested and contingent legacies, observe the peculiar position in the case of legacies charged on land, the difference being according to whether the legacy is postponed for convenience of estate, when it is to be paid anyhow, or on an event personal to legatee, when it is not paid unless that event happens.

As to construction of testamentary gifts to children, see Vol. II., pp. 498, 499, and also see *Viner v. Francis* and notes in *Indermaur's Conveyancing and Equity Cases*, 7th edition, pp. 38, 39; and generally as to whether legacy vested or contingent, see *Pawlett v. Pawlett*, *Stapleton v. Cheales*, and *Hanson v. Graham*. (Ib., pp. 49-51.)

Next of kin.—Gift to, creates a joint tenancy in nearest of kin without reference to Statutes of Distribution. The persons to take are those who answer the description at the death of testator. A gift to the persons entitled under the Statutes of Distribution excludes the husband, whose right is not under that Statute. A gift to the executors or administrators of a person is a gift to his legal personal representatives as part of such estate, and not to them beneficially.

Residuary devise.—A devise of "the rest of my lands in the parish of A" is not residuary, so that if certain land in that parish was given specifically and that devise is void, that would not pass under the above clause.

Lapse—1 Vict., c. 26, sec. 33.—Effect of child of testator dying leaving issue, is to render the property his absolutely, so that if he has made a will containing a residuary clause, it will pass thereunder; but this rule is not extended to making it pass under a covenant to settle after acquired property entered into by the child of testator on marriage.

Contingency.—When there is a gift of personal property to a legatee on a contingency, on its happening he gets all the intermediate profits, but otherwise in the case of land, for here, in the meantime, all the rents go to the residuary devisee, or if there is none, to the heir-at-law.

Future gifts.—Land cannot be limited to an unborn person for life, with remainder to the children of such unborn person. This is the rule as regards contingent remainders, and it is independent of the rule against perpetuities (*Whitby v. Mitchell*, 44 Ch. D., 85; 59 L. J., Ch., 8 (App.), 485). The per-

petuity rule is that any limitation (except one following an estate tail) is void, unless the interest created by it will certainly become vested within a life or lives in being, and 21 years thereafter, with a further period for gestation, if it actually exists (Cadell v. Palmer, Indermaur's Conveyancing and Equity Cases, 7th edition, p. 23). All limitations ulterior to or expectant to one which is void for remoteness are void also.

As regards the rule note distinction between the exercise of a special and a general power respectively. (Vol. II., pp. 508, 509.)

Theelluson Act—Void accumulation.—Where a direction to accumulate exceeds the period allowed by the Act, the income will, after the expiration of the time allowed, go to the next-of-kin or heir-at-law of the testator according to the nature of the property. (As to this Act, see Griffiths v. Vere and notes in Indermaur's Conveyancing and Equity Cases, 7th edition, pp. 23-27.) See also now the Accumulations Act, 1892 (55 & 56 Vict., c. 58).

Gifts to charities.—See *ante*, p. 40, as to proper mode of disposing of lands for a charity, and note the provisions now of the Mortmain Act, 1891 (54 & 55 Vict., c. 73), under which, if land given by will to a charity, the gift is not void, but the land must be sold within a year, or such extended time as the court allows, and the proceeds paid to the charity. If money is given by will to be laid out in land for a charity the money will nevertheless be paid to the charity. The court may sanction the charity taking the land instead of the money, if the land is required for actual occupation by the charity, and not as an investment.

A gift for charitable purposes is not obnoxious to the rule against perpetuities, although the trust may last for an indefinite period.

Observe the *cy-près* doctrine as regards gifts by will to a

charity which cannot be given effect to in the directly defined way.

CONVERSION.

The rule of Howe v. Earl of Dartmouth (see Indermaur's Conveyancing and Equity Cases, 7th edition, pp. 120, 121) does not apply, if it appears from the context of the will that the testator intended that the tenant for life should enjoy the property in *specie*.

Until conversion, where conversion should be made, note the mode of adjusting accounts between the tenant for life and the remainderman.

Precatory trusts.—Refer to numerous instances given (Vol. II., pp. 523, 524) of no trust created, and note that in nearly all these cases the true reason is that the subject is not certain.

As regards secret trusts, observe that verbal or written instructions create a trust if assented to by the legatee but not otherwise.

Charge of debts.—Where a charge and no express direction who to have power of sale, trustees of whole estate of testator have the power (1 Vict., c. 26, sec. 14), but where not so devised to trustees then executors have such power. Note that an administrator with will annexed is not within this provision. (*Re Clay & Tetley*, 16 Ch. D., 3; 50 L. J., Ch., 164.)

Devise or trust for payment of debts does not include debts barred by Statutes of Limitation, and with regard to other debts such a devise or trust will not prevent the statute from running after the death of the testator, either as to personal estate or now (since 37 & 38 Vict., c. 57, sec. 10) even as to real estate.

Descent.—Refer to the statement of the general result of the rules of descent as to the order of succession. (Vol. II., p. 532). Note sec. 4 of the Intestates Estates Act, 1884,

(47 & 48 Vict., c. 71) providing that where after 14th August, 1884, a person dies without an heir and intestate in respect of any real estate, consisting of incorporeal hereditaments, or of an equitable estate in corporeal hereditaments, the same shall escheat as if it were a legal estate in corporeal hereditaments.

Statutes of Distribution.—Refer to various rules given. (Vol. II., pp. 534, 535.) Note that grandchildren of deceased take *per stirpes*, though no one of the prior class living. (*Re Ross's Trusts*, L. R., 13, Eq., 286.) It is otherwise in the case of nephews and nieces, who only take *per stirpes* if some brother or sister of deceased living.

Legacy and succession duty.—Observe different rates of duty, and note that lineals do not pay duty in respect of any property which has paid probate or administration duty.

Learn definition of "succession." (Vol. II., p. 544.)

Note points as regards transmitted successions (16 & 17 Vict., c. 51, sec. 14), and accelerated successions (*Ib.*, sec. 15).

Note exemptions from payment of duty. (Vol. II., p. 547.)

Observe that the interest of a successor to real property is taken to be the value of an annuity equal to the net annual value of the property, during the life of the successor, or any less period he may be entitled. Observe mode of paying duty, and particularly the option now given to a successor of paying his duty over an extended period, and the effect if he dies before payment of all the instalments. (Inland Revenue Act, 1888, sec. 22; Vol. II., p. 551.)

Succession duty a first charge on property, but purchasers and mortgagees now exonerated from liability after six years of notice to the commissioners that succession duty has attached, or, in the absence of such notice, after 12 years from the succession duty attaching, or if that is after 31st May, 1889, then after six years from that date. (Vol. II., p. 554.)

DISENTAILING ASSURANCES.

Different ways in which a base fee may be enlarged into a fee simple absolute :—(a) By a new disentailing assurance either with consent of protector, or after his death; (b) by acquirement of ultimate remainder in fee; (c) by lapse of 12 years from protector's death and taking possession (under sec. 6 of 37 & 38 Vict., c. 57).

If several protectors, the office goes to the survivor, and if all die, and no provision perpetuating the protectorship, then the tenant for life becomes protector.

It is apprehended that a married woman acquiring an estate tail, on or since 1st January, 1883, may bar entail without husband joining, by force of the Married Women's Property Act, 1882.

Money subject to be invested in the purchase of lands to be entailed, may be disentailed.

PARTNERSHIP DEEDS.

Refer to Precedent No. 1 (Vol. II., p. 727), and study form of deed, and get up outline or idea of some of the chief clauses in an ordinary partnership deed.

If it is wished on death or retirement of partner that the partnership should go on as regards the other partners, provision must be made in deed for this. Observe two plans mentioned, either of which will serve the purpose. (Vol. II., pp. 725, 726.) In framing any such provision it should be stated whether anything is to be allowed for the goodwill.

POWERS OF ATTORNEY.

Formerly if vendor abroad and his solicitor proposed to execute under power of attorney it was necessary for purchaser to have declaration from the attorney to hold money on trust, or have it paid to a joint account, until proved vendor alive at time; but observe now the pro-

visions of Conveyancing Act, 1882, sec. 8.* (See *Epitome, post*, p. 90.) As regards executors or administrators doing acts under powers of attorney, they are protected by 22 & 23 Vict., c. 35, sec. 26.

Under Conveyancing Act, 1881 (sec. 46), donee of power may execute it in donor's name, or in his own name. Formerly it could only be executed in the principal's name.

* As to sec. 47 of Conveyancing Act, 1881, it is doubtful whether it does more than protect the attorney himself.



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17. What is the rule as to a vendor bidding at a sale, or having a reserve? Refer to 30 & 31 Vict., c. 48, stating its effect. (38, 39.)

18. In what summary way may disputes arising between a vendor and purchaser be now determined? When would such summary mode of procedure not be applicable? (41.)

19. State shortly the general incidents and consequences of a valid contract for the sale and purchase of land or houses. (43-45.)

20. When would an agreement for sale be properly stamped by affixing a 6d. stamp, and when would such an agreement require *ad valorem* duty to be paid thereon? (46, 47.)

21. Conditions of sale stipulate that the title shall commence with a deed dated in 1860. It turns out that this was a deed executed under a power of appointment. Has the purchaser a right to call for the instrument conferring the power? (118.)

22. What instruments should be set out in an abstract of title? Should you abstract (1) legal mortgages which have been paid off; (2) equitable mortgages which have been paid off; (3) expired leases? (118, 119.)

23. Where land is conveyed to trustees upon trust for sale, and the trusts of the sale moneys are declared by a separate deed, is there any necessity to abstract the latter deed? Give reason. (119.)

24. How do you verify the following matters appearing on an abstract:—(a) A will, (b) fine, (c) recovery, (d) redemption of land tax, (e) intestacy, (f) title by force of a private Act of Parliament? (120-126.)

25. If a vendor's title deeds, or any of them, have been lost or destroyed, what evidence has to be supplied to a purchaser with regard to them? (123.)

26. What special provisions are contained in the Con-

veyancing Act, 1882, with reference to deeds executed under powers of attorney? (123, 124.)

27. What is the title to be shown to an advowson? (125.)

28. Under what circumstances need a purchaser not insist upon evidence being given him of the payment of succession duty? (127.)

29. State shortly the penal liabilities of a vendor or his solicitor who omits to include in the abstract certain deeds affecting the title. (127, 128.)

30. Enumerate some of the chief provisions of the Yorkshire Registries Act, 1884, stating when it came into operation. (133-136.)

31. Within what time should a will affecting land in Middlesex be registered? What is provided by the Vendor and Purchaser Act, 1874, with regard to the will not having been registered within the proper time? (137.)

32. Trace shortly the law of judgments as affecting land from the earliest times down to the present day. (138-146.)

33. To what extent is a Crown debt a charge on the debtor's lands? (147-149.)

34. A dies and an action is brought for the administration of his real and personal estate. Can either his trustees or his executors make a title to either his realty or his personality pending the action, without the consent of the Court? (150.)

35. What searches should, at the present day, strictly be made on behalf of a purchaser before completion? (155-158.)

36. What is the rule as to the admission to copyholds of joint tenants, co-parceners, and tenants in common respectively? (161, 162.)

37. When a testator desires that his copyholds shall be sold by his trustees for payment of his debts, what is the proper mode of dealing with them in his will? (166.)

38. To what extent are acts done by the lord of a manor, who has only a limited interest therein, binding on his successors ? (167.)

39. Enumerate some of the chief provisions of the Copyhold Acts, 1852-1887, with regard to the compulsory enfranchisement of copyholds. (168, 169.)

40. To what extent has the Married Women's Property Act, 1882, altered the position of a married woman with regard to holding and disposing of real estate ? (170, 171.)

41. What is the position of an infant who has entered into a contract to purchase lands ? (172.)

42. When a person has been found lunatic by inquisition, how may his property be sold, mortgaged, or leased ? (174.)

43. What was formerly the effect of conviction for felony on real and personal estate possessed by the convict either legally or equitably ? What is the law on this subject now ? (178, 179.)

44. To what extent may the following hold land : (a) a corporation ; (b) a company registered under the Companies Act, 1862 ; (c) a company formed for the purpose of promoting art or science not involving gain to its members ? (179, 180.)

45. Explain what is meant by statutory covenants for title, and point out what covenants are implied by statute according to circumstances. (184-189.)

46. A in 1850 bought the fee simple of certain land and covenanted not to build on it. B in 1881 purchased the land and has commenced to build. Can he be restrained from so doing ? (193.)

47. Under a simple conveyance of land, do the mines and minerals always pass ? If the land is not conveyed, but there is simply a grant of the right to get minerals, does this preclude the grantor from himself working for minerals ? (198, 199.)

48. What are the expenses to be borne by a vendor and purchaser respectively on a contract for the sale and purchase of land? (202.)

49. Sketch the outline of an ordinary mortgage of freeholds? (446.)

50. What is the best way as a general rule of framing a mortgage of leaseholds? (446.)

51. What practical difference is there in the extent of the covenants for title entered into by a vendor on a sale and by a mortgagor on a mortgage? (449.)

52. What do you understand by an attornment clause in a mortgage? Is there any advantage in inserting an attornment clause in a mortgage at the present day? (451.)

53. How may an equitable mortgage of lands be affected? What will be the effect of a deposit of part only of the title deeds to secure money? (452.)

54. Explain shortly the doctrine of consolidation of mortgages, and the enactment thereon contained in the Conveyancing Act, 1881. (456, 457.)

55. Is a mortgagor in possession justified in cutting timber or in taking the crops on the mortgaged property? (459.)

56. What powers of sale are conferred on mortgagees by the Conveyancing Act, 1881? Can these powers be safely relied on, or should express powers be inserted? (460-463.)

57. Enumerate the different remedies of a mortgagee to enforce payment of his mortgage money. Is he entitled to exercise all his remedies simultaneously? If he first forecloses can he then sue the mortgagor on his covenant to pay? (467, 468.)

58. When a mortgagee takes possession, what is the rule as between him and the mortgagor as to the taking of annual rests? (471, 472.)

59. Within what time must an action be brought on a

covenant for payment contained in a mortgage deed? (472.)

60. A mortgagee has been in possession, and has given no acknowledgment of title for more than 12 years. For nearly all the time, however, the mortgagor's representative has been a person under disability. Does this extend the time for redemption? When the right of redemption has once been barred, can a subsequent acknowledgment revive it? (475.)

61. In what respect does the Act of 40 & 41 Vict., c. 34, amend (a) 17 & 18 Vict., c. 113; (b) 30 & 31 Vict., c. 69? (476-478.)

62. A third mortgagee advanced his money without notice of the second mortgage, and shortly afterwards the mortgagor paid off the first mortgage. Can the third mortgagee then, by getting the first to convey the legal estate to him, improve his position? (481.)

63. B by fraud induces A to execute a mortgage, no money passing, and B then transfers his mortgage to C, *bonâ fide* for value. Has C any right to hold the property against A until A pays the amount he (C) has paid? (482.)

64. State shortly the rules laid down by the Conveyancing Act, 1882, as to notice. (487.)

65. Under what circumstances will a first legal mortgagee be postponed to a subsequent mortgagee? (489, 490.)

66. What risks attend the taking of a second mortgage? If, notwithstanding these risks a person determines to advance on a second mortgage what precautions should he observe? (492.)

67. On the death of a mortgagee of a fee simple property to whom should the mortgagor pay his mortgage money and who would reconvey the estate to him? (498, 499.)

68. What stamps do the following instruments bear? (1) a legal mortgage; (2) a memorandum by way of equitable

mortgage ; (3) a transfer of a mortgage ; (4) a reconveyance. (500, 501.)

69. State shortly some of the principal provisions of the Land Transfer Act, 1875, with regard to the registration of land. (676-678.)

70. Where land which has been registered under the Land Transfer Act, 1875, is contracted to be sold, of what does the abstract consist ? (685.)

71. With regard to land registered under the Land Transfer Act, 1875, how do you effect (1) a conveyance ; (2) a legal mortgage ; (3) an equitable mortgage ; (4) a strict settlement ? (686-688.)

72. To what bills of sale does the Act of 1882 apply ? State shortly the most prominent features of difference between the Acts of 1878 and 1882. (711-720.)

73. Does a mortgage of premises, with fixtures thereon, require a registration as a bill of sale ? (714-716.)

74. Under what circumstances will a bill of sale by way of mortgage be bad, in the event of the grantor's bankruptcy ? (728-732.)

75. What are the two principal points to be attended to in framing a bill of sale by way of mortgage ? (733, 734.) Why should a grantor in such a bill of sale not convey "as beneficial owner" ? (736.)

VOLUME II.

76. Define a lease. What are the requisites to a valid lease ? (1, 2.)

77. If in an agreement for a yearly tenancy there is a provision that the tenant shall have an option of taking a lease for 21 years, for how long does this option continue ? (3.)

78. What is the effect of a covenant by a landlord in a lease that he will not turn his tenant out so long as he pays his rent regularly ? (4.)

79. For how many years' arrears of rent can a landlord or his executors distrain? When can a landlord distrain on goods his tenant has removed from the demised premises? (5, 6.)

80. What are "usual covenants" in the lease of a dwelling-house? With regard to the tenant's covenant to pay rent, rates, taxes, &c., does the addition of the word "assessments" make any difference in his position? (10, 11.)

81. What are the obligations of landlord and tenant respectively with regard to repairs, the lease containing no covenant on either side upon the point? (12-14.)

82. State generally the effect of lessee's covenant in a lease, not to assign without licence. (17.) What difference would it make if the covenant provided that the landlord's consent should not be unreasonably withheld from a responsible tenant? (17, 18.)

83. Under the ordinary conditions of re-entry contained in a lease, must the landlord, before entry, make a demand for his rent? What does the Common Law Procedure Act, 1852, provide upon this point? (19.)

84. Explain shortly the present position of a landlord with regard to his right to re-enter for breach of covenants other than payment of rent. (20-24.)

85. By force of what authority is it that the assignee of a reversion can take advantage of a condition of re-entry inserted in the original lease? (24, 25.)

86. A makes a lease of three houses under one entire rent. He then assigns his reversion in each house to three different persons. What would be the rights of each assignee respectively? (26.)

87. What was formerly, and what is now, the effect of a merger, or surrender of a reversion upon a previously existing underlease of the premises? (27.)

88. What notice is necessary to be given to determine a yearly tenancy? What will be the position if the tenant does not quit at the expiration of the notice, and the landlord receives rent for the occupation since that time? (28, 29.)

89. A tenant in fee simple dies before harvest. If he is intestate, what will be the rights of the heir, and the personal representatives respectively? If he is testate, what will be the rights of the devisee and executor respectively? (35.)

90. Under the Agricultural Holdings Act, 1875, for what improvements is the tenant to be allowed compensation? (39, 40.)

91. What is provided by 12 & 13 Vict., c. 26, with regard to defective leases made under a power? How was this enactment amended by 13 & 14 Vict., c. 17? (42, 43.)

92. State generally the powers of leasing which are conferred on tenants for life, and others standing in a similar position, by the Settled Land Act, 1882. (45.)

93. What difference is there between an express covenant for quiet enjoyment, and the covenant to the same effect which is implied by the use of the word "demise"? (48.)

94. What is the usual practice with regard to the preparation and payment of the costs of leases? (49.)

95. Define a bare trust. Show how an active trust may become a bare trust. What is the duty of a bare trustee? (173, 174, 210.)

96. What are the duties of trustees with regard to selling the trust property? What is the exact effect of a sale by trustees under unnecessary depreciatory conditions? (181, 182.)

97. When does a power of sale authorise a mortgage of an estate? (185.)

98. Are trustees justified in putting up the trust property for sale conjointly with property belonging to another person? If so, what precautions should they observe before doing so? (186.)

99. Under what circumstances are trustees who have to receive money belonging to the trust justified in delegating the receiving of the same to another person? (187.)

100. When can a trustee purchase property of his *cestui que trust*? (189.)

101. Enumerate the principal investments open to trustees to make when the trust instrument is silent on the point. What is the general rule as to the proportion of the value of property that trustees may safely advance on mortgage? (191-195.)

102. Is a trustee justified in insuring the trust property or in renewing renewable leaseholds if the trust instrument is silent on the point? (197.)

103. A trustee lends £5,000 on a proper mortgage security, and the interest is regularly received and paid to the tenant for life for ten years. Then the security is realized, and, the property having depreciated, it realizes only £4,500. Explain the principle on which the loss will be apportioned between the tenant for life and the remainderman. (199.)

104. What is a sufficient acceptance of a trust? If the trustee is also executor will proving the will amount to such an acceptance? (201.)

105. What provision is contained in the Conveyancing Act, 1881, for facilitating the retirement of trustees? (203, 204.)

106. Explain the respective rights of trustees, tenants for life and remaindermen with regard to the possession of title deeds. (212, 213.)

107. A, B and C are trustees, and of these A is a solicitor. Can he be appointed to act for his co-trustees and make his

charges, and is there any difference on this point between conveyancing and litigious business? (215.)

108. Compare the relative positions with regard to acquirement of property by married women under the provisions of the Acts of 1870 and 1882 respectively. (217-221.)

109. Does courtesy attach to (a) property of which wife was a joint tenant; (b) an equity of redemption; (c) lands held by the wife to her separate use; (d) lands of which the wife was tenant in tail? (221, 222.) How might it be released? What bearing has the Married Women's Property Act, 1882, with regard to it? (223.)

110. Explain the effect as regards a married woman of the clause against anticipation. Refer to the case of Robinson v. Wheelwright, and state how the decision in that case has been affected by the Conveyancing Act 1881 (sec. 39). (233.)

111. What powers are given to the Divorce Court (a) of making a settlement when there is none; and (b) of rectifying or altering an existing settlement? (247.)

112. Sketch the outline of (1) a strict settlement of realty on marriage (Precedent No. 28, p. 373); (2) an ordinary settlement of personal estate on marriage (Precedent No. 1, p. 292).

113. To what extent is a settlement on a man until bankruptcy or alienation good? (250, 251.)

114. State the provision of Section 43 of the Conveyancing Act, 1881, with regard to the allowance by trustees of the income of the trust property for the maintenance of an infant? (252, 253.)

115. Does a covenant to settle after acquired property apply to (a) reversionary property coming to wife after marriage; (b) any property which she had in reversion at the time of the marriage, but which falls into possession during the marriage? Does it operate as an execution of a general power of appointment? (255-257.)

116. What powers of sale are conferred by the Settled Land Act, 1882? When does notice have to be given prior to sale, and when is the consent of trustees or of the Court necessary? (263.)

117. With regard to land, subject to a trust for sale, state shortly the provisions of Section 63 of the Settled Land Act, 1882, as amended by Sections 6 and 7 of the Settled Land Act, 1884? (272, 273.)

118. To what extent can an infant make a valid marriage settlement (a) under the provisions of 18 & 19 Vict., c. 43; (b) irrespective of this Act? (278, 279.)

119. A is possessed of leasehold property subject to rent and covenants, and makes a settlement of it without consideration on B. Can B's rights be possibly called in question under either 13 Eliz., c. 5, or 27 Eliz., c. 4? (281, 282.)

120. What substantial difference is there between a voluntary declaration of trust and a voluntary covenant to assign or transfer any property? (285, 286.)

121. Is there any absolute duty cast upon a solicitor who prepares a voluntary settlement to point out to his client the fact that it is an irrevocable instrument unless a power of revocation is inserted therein? (287.)

122. What *ad valorem* duty is payable on a settlement of stock? A settles a policy of insurance for £10,000 which he has just effected. How would this settlement be stamped? (289, 290.)

123. What do you understand by a "charitable disposition"? How should a disposition of land in favour of a charity be made? (429-432.)

124. A married woman makes a will with the consent of her husband, and such will contains a residuary clause. Will this operate to pass property that she acquires after she becomes a widow? (472, 473.)

125. Gift to A, B, and C as joint tenants. A is an attesting witness to the will. What is the result? (475.)

126. Legacy to A, who is an attesting witness to the will. Subsequently testator makes a codicil, which is attested by two other witnesses. Will A get his legacy? (475.)

127. What do you understand by a "dependent relative revocation"? (477, 478.)

128. What is the effect of a disturbance of a testator's estate after the making of his will? A devises Whiteacre to B, and then contracts to sell it to C. The contract is subsequently cancelled, and A then dies. What is the position? (479.)

129. Give an instance of a general devise, which will only operate to pass property which the testator was then possessed of, and not property which he subsequently acquired. (480.)

130. What was formerly, and what is now, under the Conveyancing Act, 1881, the rule as to the devolution of trust and mortgaged estates, on a trustee's or mortgagee's death? (485, 488.)

131. What is the rule as to when on a devise to trustees they take the legal estate? (489.)

132. What is provided by the 30th and 31st sections of the Wills Act, as to what estate trustees take under a will which does not expressly deal with the point? (492.)

133. With regard to legacies charged on the land, under what circumstances will they be paid, although the legatee dies before the day appointed for payment? (497, 498.)

134. Illustrate the difference between a gift to next-of-kin, and to next-of-kin according to the Statute of Distributions. (501.)

135. In what two cases does the 1 Vict., c. 26 provide that there shall be no lapse? A devises Whiteacre to his

son B. B predeceases his father, leaving surviving him a widow and a son, and having made a will leaving everything to his widow ; at A's death both the widow and son of B are still living. Who will be entitled to Whiteacre, and why ? (504, 505.)

136. State the effect of the Mortmain Act, 1891, with regard to devises of land to charities. (515.)

137. If a testator gives the whole of his property to trustees in trust for A for life, and then for B, what are the trustees' duties with regard to conversion ? Explain shortly the respective rights of A and B in the testator's estate. (518, 519.)

138. When has an executor by statute power to sell his testator's freeholds ? Does this apply to an administrator with the will annexed ? (528, 529.)

139. Does a devise or bequest for payment of debts prevent the Statute of Limitations barring such debts ? Would such a devise or bequest apply to statute barred debts ? (531, 532.)

140. A dies intestate, leaving surviving him a widow and children. How does his personal estate devolve ? (532.)

141. B dies intestate, leaving surviving him a widow and a brother. How does his personal estate devolve ? (532.)

142. C dies intestate, leaving surviving him two sons and three grandchildren, the children of a deceased son. How does his personal estate devolve ? (534.)

143. D dies intestate, leaving surviving him six grandchildren. One is a child of his only son, and five are the children of his only daughter. How does his personal estate devolve ? (534.)

144. E dies intestate, leaving surviving him his father and mother, and also a brother and sister. How does his

personal estate devolve? How would it devolve if he had left no father? (534.)

145. F dies intestate, leaving surviving him a brother, and three nephews, the children of a deceased brother. How does his personal estate devolve? (534.)

146. G dies intestate, leaving surviving him a nephew, and three grand-nephews, the children of a deceased nephew. How does his personal estate devolve? (535.)

147. If an Englishman dies intestate, leaving personal estate in France, and also land situate in that country, do these properties respectively devolve according to English or French law? (536.)

148. When does the owner of a base fee by force of time acquire an absolute fee simple? (676.)

149. Enumerate shortly some of the most usual clauses in a partnership deed. (Precedent No. 1, page 727.)

150. What provisions should be inserted in a partnership deed with regard to the death of a partner where it is desired that the business should not be wound up, but should still continue? (725, 726.)



EPITOMES OF STATUTES.

37 & 38 VICT., C. 78.

The Vendor and Purchaser Act, 1874.

(Commencement of Act, 7th August, 1874.)

Sec. 1.—Forty years substituted for 60 years as the root of title, except in those cases in which formerly an earlier title than 60 years required.

Sec. 2.—(1.) Intended lessee or assign of leaseholds not to be entitled to call for title to freehold.

(2.) Recitals, &c., in deeds and other instruments 20 years old, to be sufficient evidence of what is stated in them.

(3.) Though vendor unable to supply legal covenant for production of deeds, this not to be an objection to title if, on completion, purchaser would have an equitable right to production.

(4.) Covenant for production of deeds to be at purchaser's expense, but vendor to bear expense of perusal and examination.

(5.) Vendor retaining any part of estate to be entitled to retain title deeds.

Secs. 4 and 5.—Sec. 4 was repealed by Conveyancing Act, 1881 (sec. 30, sub-sec. 2). Sec. 5 was repealed by the Land Transfer Act, 1875 (sec. 48), and the substitutionary provision contained in that statute was itself repealed by Conveyancing Act, 1881 (sec. 30, sub-sec. 2). The wider provisions of sec. 30 (sub-sec. 1) of the Conveyancing Act, 1881, now stands in the place of both enactments.

Sec. 6.—Married woman, who is a bare trustee of freeholds or copyholds, may convey as if a *feme sole*.

Sec. 7.—This section abolished “tacking,” but was repealed by the Land Transfer Act, 1875 (sec. 129). (Tacking therefore did not exist between 7th August, 1874, and 1st January, 1876.)

Sec. 8.—Where will of land in Middlesex or Yorkshire not registered within time allowed, an assurance to a purchaser or mortgagee by the devisee, or any one deriving title under him, shall, if registered before, take precedence of, and prevail over any assurance from testator's heir-at-law.

Sec. 9.—Vendor or purchaser may obtain decision of judge in chambers (Chancery Division) by originating summons, on any point arising as to requisitions or objections, &c., and not being a question affecting the existence or validity of the contract.

44 & 45 VICT., C. 41.

The Conveyancing and Law of Property Act, 1881.

(Commencement of Act, 1st January, 1882.)

(Part I. is Preliminary.)

Part II. Sales and other Transactions.

Sec. 3.—(1.) Under a contract to sell and assign a term of years derived out of a leasehold interest in land, the intended assign shall not have the right to call for the title to the leasehold reversion.

(2.) Where copyhold or customary property has been enfranchised, purchaser to have no right to call for the title to make the enfranchisement.

(3.) A purchaser not to require any abstract or copy of any instrument affecting title prior to time prescribed by law, or agreement, for commencement of the title, even although the same creates a power subsequently exercised by an instrument abstracted in the abstract furnished to

purchaser ; and no prior enquiry to be allowed, and recitals as to prior title to be presumed correct.

(4.) Where land sold is held by lease (not including under-lease) purchaser shall assume—unless the contrary appears—that the lease was duly granted ; and, on production of the receipt for the last payment due for rent, shall assume, unless the contrary appears, that all the covenants, &c., have been duly performed and observed up to completion.

(5.) Where land sold is held by under-lease, the purchaser shall assume, unless the contrary appears, that the under-lease and every superior lease were duly granted ; and on production of the receipt for the last payment of rent shall assume, unless the contrary appears, that all the covenants, &c., have been duly performed and observed up to completion of the purchase, and further that all rent due under every superior lease, and all covenants, &c., of every superior lease, have been paid and duly performed and observed up to that date.

(6.) On a sale of any property, the expenses of the production and inspection of all Acts of Parliament, enclosure awards, records, proceedings of courts, court rolls, deeds, wills, probates, letters of administration, and other documents, not in the vendor's possession, and the expenses of all journeys incidental to such production or inspection and all other expenses relating thereto, and all attested, stamped, office, or other copies thereof shall be borne by the purchaser ; and where the vendor retains possession of any document, the expenses of making any copy, which a purchaser requires, shall be borne by him.

(7.) On a sale of any property in lots, a purchaser of two or more lots, held wholly or partly under the same title, shall not have a right to more than one abstract of the common title, except at his own expense.

(10.) This section applies only to sales made after the commencement of this Act.

Sec. 4.—(1.) Where, at the death of any person after the commencement of this Act, there is subsisting a contract enforceable against his heir or devisee, for the sale of the fee simple or other freehold interest, descendible to his heirs general, his personal representatives shall have power to convey the same, so as to give effect to the contract.

Sec. 5.—Where, in a sale made or completed after commencement of Act, land is sold subject to incumbrance court may, on application of any person interested, allow payment into court of a sum sufficient to meet such incumbrance and any costs and interest (not usually exceeding one-tenth of original amount paid in), and thereupon court may declare land to be freed from incumbrances. The court has power afterwards, on notice to persons interested in the fund paid in, to direct transfer thereof.

Sec. 6.—In conveyances made after commencement of Act, it is not to be necessary to insert after the parcels the ordinary "general words" heretofore inserted, but they are to be deemed to be included.

Sec. 7.—(1.) In conveyances, settlements, assignments, mortgages, &c., made after commencement of Act, it shall not be necessary to insert the ordinary covenants for title heretofore inserted, but the ordinary covenants as heretofore inserted shall be deemed to be included. (2 and 3.) Where a conveyance is made by a person by direction of the beneficial owner, such beneficial owner shall be deemed to convey as beneficial owner, and a covenant on his part shall be implied accordingly. Where husband and wife convey, wife to be deemed to convey by direction of husband, and, in addition to the covenant implied on the part of the wife, there shall be implied, firstly, a covenant on the part of the husband as the person giving that direc-

tion, and, secondly, a covenant on the part of the husband, in the same terms as the covenant implied, on the part of the wife.

Sec. 8.—In sales after the commencement of Act, purchaser not to be entitled to require that deed shall be executed in his or her solicitor's presence, but *at his own cost*, may have same attested by a person appointed by him, who may, if he think fit, be his solicitor.

Sec. 9.—Where a person retains possession of documents and gives to another an acknowledgment in writing of the right of that other to production of those documents and to delivery of copies thereof, or an undertaking in writing for safe custody thereof, such acknowledgment and undertaking respectively shall have generally the same effect as the ordinary covenants for the purpose heretofore entered into, and shall satisfy any liability to give any such covenants.

Part III. Leases.

Sec. 10.—In leases made after commencement of Act, rent and benefit of lessee's covenants to run with reversion, notwithstanding severance of reversionary estate and recoverable accordingly.

Sec. 11.—Like provision with regard to the obligation on lessor's covenants.

Sec. 12.—Also on any severance of reversion, every condition, right of re-entry, &c., shall be apportioned.

Sec. 13.—On a contract made after the commencement of Act, to grant a lease for a term of years to be derived out of a leasehold interest with a leasehold reversion, the intended lessee shall not have the right to call for the title to that reversion.

Sec. 14.—(1 and 5.) Lessor not to be able to take advantage of condition of re-entry or forfeiture in lease—except a condition against assigning, underletting, &c., or a condi-

tion for forfeiture on bankruptcy, or execution, or, in the case of a mining lease, to a covenant or condition for allowing lessor to have access to or inspect books, accounts, records, weighing machines, or other things, or to enter and inspect the mine and the workings thereof—until he has served on lessee a notice specifying breach, and, if capable of remedy, requiring him to remedy same, and lessee fails within a reasonable time to comply therewith. (2.) Where lessor proceeds to enforce any such condition, the court has power in lessor's action, or in any action brought by lessee, to grant him relief on such terms as it shall think fit. (7.) 22 & 23 Vict., c. 35, secs. 4 to 9, and 23 & 24 Vict., c. 126, sec. 2, are repealed. (8.) This not to affect law relating to re-entry or forfeiture or relief in case of non-payment of rent. (9.) This section applies to leases made either before or after the commencement of the Act, and *shall have effect notwithstanding any stipulation to the contrary.*

Part IV. Mortgages.

Sec. 15.—In all mortgages before or after the Act, and notwithstanding stipulations to the contrary, the mortgagee (not having been in possession) shall on payment, be bound, if required, not only to re-convey, but also to assign mortgage debt, and transfer the mortgaged property to any third person.

Sec. 16.—Mortgagor, whilst he has right of redemption, to have right on payment of mortgagee's costs to inspect and make copies, &c., of title deeds.

Sec. 17.—Where there are several mortgages, and they or one of them are or is made after the commencement of Act, the doctrine of consolidation, unless the contrary is expressed, is no longer to exist.

Sec. 18.—A mortgagor *in possession*, and a mortgagee *in possession* respectively, shall have power to make leases as follows:—

An agricultural or occupation lease for not exceeding 21 years, and a building lease for not exceeding 99 years, the same to take effect within 12 months from date, to be at the best rent that can be obtained, without fine, to contain a covenant for payment of rent and condition of re-entry on non-payment for not exceeding 30 days, and a counterpart to be executed by lessee, and delivered to lessor; but execution of lease by lessor shall in favour of lessee be sufficient evidence. In the case of building leases, they must be in consideration of houses or buildings erected or improved, &c., or to be erected or improved, &c., within 5 years from date, and a nominal or less rent than that ultimately payable may be reserved for first 5 years or any part thereof. A mortgagor taking advantage of this section must, within one month of making the lease, deliver to the mortgagee, or where more than one, then to mortgagee first, in priority, a counterpart of the lease duly executed by lessee; but the lessee is not to be concerned to see that this provision is complied with. All this is subject to the express provisions of the mortgage deed, and applies only to mortgages made after commencement of Act, unless otherwise agreed.

Sec. 19.—Mortgagee under deed executed after commencement of Act to have following powers:—*When principal money due*, power of sale in the ordinary way, and also power to appoint a receiver; and, *at any time after date of deed*, power to insure against fire, and, *when in possession*, power to cut and sell timber, &c., ripe for cutting, and not planted for shelter or ornament, any such sale, however, to be completed within 12 months from making of any contract of sale. These powers may be varied or extended by the mortgage deed.

Sec. 20.—The said power of sale not to be exercised until default in payment after *three* months' notice served on mortgagor, or one of several mortgagors, or unless interest

in arrear for *two* months, *or* there is breach of some other provision in the mortgage deed.

Secs. 21 and 22.—Mortgagee selling under above power to be able to vest property in purchaser, who is not to be affected, though the sale was not under the circumstances authorised. Money received from sale to be applied in discharging prior incumbrances, then all costs of sale, &c., then the mortgage debt, and then any balance to mortgagor. Mortgagee not to be liable for any involuntary loss on sale. The sale may be by any person for the time being entitled to receive and give a discharge for the mortgage money. Mortgagee's receipts to be sufficient discharge to purchaser.

Sec. 23.—(1, 3 and 4.) With regard to the power to insure, conferred by sec. 19, the insurance shall not exceed amount specified in mortgage deed; or, if no amount specified, then shall not exceed two-thirds of the amount that would be required in case of total destruction to restore the property insured. All money received under insurance shall, at the option of mortgagee (and without prejudice to any obligation imposed by law or special contract), be applied in rebuilding, &c., or in or towards discharge of mortgage debt. (2.) The said power to insure is not to apply where there is a declaration in the mortgage that no insurance is required, or where mortgagor keeps up insurance in accordance with the mortgage deed, or where the mortgage deed contains no covenant as to insurance, but mortgagor insures to the amount which the mortgagee is authorized to insure for.

Sec. 24.—(1 to 5.) The power to appoint a receiver, conferred by sec. 19, shall not be exercised until mortgagee has become entitled to exercise power of sale given by Act. Then he may be appointed by writing under mortgagee's hand, and in like manner he may be removed and a new receiver

appointed, and, when appointed, receiver to have all full and necessary powers, and is to be considered the agent of the *mortgagor*, who is to be solely responsible for his acts and defaults, unless the mortgage deed otherwise provides. Any person to be safe in paying to receiver. (6.) Receiver may retain out of moneys received, by way of remuneration and in satisfaction of all costs, charges, and expenses incurred by him as receiver, a commission at such rate, not exceeding 5 per cent. on the gross amount of all moneys received, as is specified in his appointment, and if no rate specified, then at the rate of 5 per cent. on the gross amount, or at such higher rate as the court, on the receiver's application, thinks fit to allow. (8.) Receiver to apply moneys thus:—(a) In discharging rents, rates, outgoings, &c. (b) In keeping down all annual or other payments, and the interest on any principal sums having priority. (c) In payment of his commission, and in payment of any premiums on proper policies of insurance, and in payment of sums for necessary or proper repairs directed in writing by the mortgagee. (d) In payment of interest accruing in respect of the principal money due under the mortgage; and (e) The residue he shall pay to the person who but for his possession, would have been entitled to receive the income of the mortgaged property.

Sec. 25.—(1 to 5.) In actions brought either before or after the commencement of Act, any person entitled to redeem may have a judgment for sale, instead of for redemption, or for sale or redemption in alternative, and in any action for foreclosure, sale, or redemption, the court may, on request, direct a sale on such terms as it thinks fit, including, if it thinks fit, the deposit in court of a reasonable sum fixed by the court to meet expenses of sale and to secure performance of the terms; but in any action brought by a person interested in the right of redemption and seeking a sale, the court may direct the plaintiff to give security for

costs, and may give the conduct of the sale to any defendant, and may give such directions as it thinks fit, respecting the costs of the defendants, or any of them. The court may direct a sale without previously determining the priority of any incumbrancers. - (6.) 15 & 16 Vict., c. 86, sec. 48, is repealed.

Part V. Statutory Mortgage.

Sec. 26.—(1.) A mortgage of freeholds or leaseholds may be by deed expressed to be made by way of statutory mortgage in the form given in Part I. of 3rd schedule to Act, with such variations as necessary. (2.) In such a deed there shall be deemed to be included and implied covenants for repayment of principal, and payment of interest half-yearly, and proviso for redemption on payment.

Sec. 27.—(1 and 2.) A transfer of such a statutory mortgage may be by deed, by way of statutory transfer, in one of the three forms, A, B, and C, given in Part II. of the 3rd schedule to Act, as may be appropriate, with such variations as necessary ; and such a transfer shall vest in transferee all powers and rights as if he had been original mortgagee. (3.) If the transfer is in the form B—that is, mortgagor joining in transfer—a covenant shall be implied by him to pay the principal money on the next day fixed for payment of interest, and if not then paid to continue to pay interest.

Sec. 28.—Where there are several mortgagors or covenantors, any implied covenants are to be deemed joint and several, and where several mortgagees or transferees, any implied covenants to be deemed with them jointly, unless mortgage money expressed to be secured in shares or distinct sums, when covenant to be deemed with each severally in respect of the sum secured to him.

Sec. 29.—A re-conveyance of a statutory mortgage may be by way of statutory re-conveyance, in form given in Part III. of 3rd schedule to Act, with such variations as necessary.

Part VI. Trust and Mortgage Estates on Death.

Sec. 30.—(1 and 3.) In case of death, after commencement of Act, of a trustee or mortgagee, the trust or mortgage estate shall, notwithstanding any testamentary disposition, go to personal representatives, who shall have all proper powers, and shall be deemed, for the purposes of this section, the heirs and assigns of the deceased within the meaning of all trusts and powers. (2.) Sec. 4 of 37 & 38 Vict., c. 78, and sec. 48 of 38 & 39 Vict., c. 87, repealed.

Part VII. Trustees and Executors.

Sec. 31.—When, in trusts created before or after the commencement of this Act, any trustee is dead or remains abroad for more than a year, or desires to be discharged, or is unfit or incapable of acting therein, the person or persons (if any) nominated by the instrument creating the trust, and if none, or none able and willing to act, then the surviving or continuing trustees or trustee, or the personal representatives of the last surviving or continuing one, may appoint new trustees or trustee, and so the original number of trustees may be increased or diminished, but, except when only one trustee was originally appointed, there must be always two trustees to perform the trust. This provision includes the case of a trustee under a will predeceasing testator, and those relative to a continuing trustee include a refusing or retiring trustee. It is subject to any contrary intention, or any terms or provisions in the trust instrument.

Sec. 32.—When, in trusts created before or after commencement of Act, there are more than two trustees, if one

by deed declares that he is desirous of being discharged, if his co-trustees and such other person (if any) as is empowered to appoint trustees by deed consent to his discharge, and to the vesting in the co-trustees alone of the trust property, then the trustee, desirous of being discharged shall be deemed to have retired, and shall by the deed be discharged therefrom under this Act, without any new trustee being appointed in his place. This is subject to any contrary intention, or any term or provision in the trust instrument.

Sec. 33.—In appointments by the court of new trustees, any such new trustee shall, *as well before* as after the trust property becomes properly vested in him, have all powers, &c., as if he had been originally trustee.

Sec. 34.—In deeds executed after commencement of Act, either appointing a new trustee, or operating to discharge a retiring trustee, a mere declaration that the trust property shall vest in the new trustee or continuing trustee, as the case may be, shall have all the effect of a conveyance or assignment.

Sec. 35.—In trusts created after commencement of Act, and subject to any contrary provision or intention in the instrument, trustees having a power of sale may sell or concur in selling all or any part of the property, subject to prior charges or not, by public auction or private contract, and generally as they think fit.

Sec. 36.—Trustees' receipts for any money, securities, or other personal property, payable or deliverable to them under their trust, to be a sufficient discharge.

Sec. 37.—In all executorships and trusts existing either before or after commencement of Act, and subject to the provisions or intentions of the trust instrument, executors may pay or allow any debt or claim, on any evidence they think sufficient, and one executor, or two or more trustees

acting together, or a sole acting trustee where authorised to act by himself, to have full power to accept composition, or take security for debts, or to allow time, or submit to arbitration, or release or settle debts, &c., provided any such act done in good faith.

Sec. 38.—In executorships and trusts constituted after or created by instruments coming into operation after commencement of Act, powers given to two or more executors or trustees jointly, may, unless contrary expressed, be exercised by survivor or survivors.

Part VIII. Married Women.

Sec. 39.—Notwithstanding a married woman is restrained from anticipation, the court may, if it think fit, where it appears to be for her benefit, by judgment or order with her consent, bind her property.

Sec. 40.—A married woman, whether an infant or not, to have power to appoint an attorney to execute any deed, or do any act which she herself might execute or do.

Part IX. Infants.

Sec. 41.—Where an infant is entitled to a fee simple, or to any leasehold interest, at a rent, the land to be deemed a settled estate within the Settled Estates Act, 1877.

Sec. 42.—When under an instrument coming into operation after commencement of Act, infant thus entitled, and if a woman, also unmarried, trustees under settlement, or trustees appointed by the court on the application of guardian or next friend of infant, may enter into and continue in possession of the land, and shall then have full powers to cut timber in usual course for sale or repairs, to pull down and rebuild houses, &c., and generally manage the property in the same way that infant might, if of full age, and may apply the income in keeping down expenses of management, and at

his discretion for maintenance of infant, and shall lay out, invest, and accumulate the residue in trust for infant on attaining 21, or if a woman, married whilst an infant, for her separate use, or if infant dead, in trust for the parties then entitled. These provisions only apply so far as no contrary intention in the instrument under which infant derives the property.

Sec. 43.—Trustee, under any instrument operating either before or after commencement of Act, to have full discretionary power of applying income for maintenance of any infant either absolutely or contingently entitled, and may for this purpose resort to the accumulations of any past years.

Part X. Rent Charges, &c.

Sec. 44.—Where a person is entitled to a rent charge, or other similar annual payment, under some instrument coming into operation after commencement of Act, he is to have the following powers to recover and enforce it :—(a.) If in arrear for 21 days, power of distress. (b.) If in arrear for 40 days, power to enter into possession and take income till satisfaction. (c.) Or instead, or in addition, power to demise the land to a trustee for a term of years on trust, by way of mortgage, or sale, or demise, of the whole or any part of the term to raise the money to satisfy him. These powers are subject to any contrary provisions or intention in the instrument creating the rent charge.

Sec. 45.—Where there is existing any quit rent, chief rent, rent charge, or other annual sum issuing out of lands, same may be redeemed by the owner of the land by obtaining a certificate from the copyhold commissioners of amount to be paid for redemption, and then after one month's notice to the person entitled to the rent, paying or tendering the amount certified. The commissioners may then give a final and conclusive certificate that rent is redeemed. This pro-

vision does *not* apply to a tithe rent charge, or rent reserved on sale, or lease, or made payable under a grant or licence for building purposes, or to any sum or payment issuing out of land not being perpetual.

Part XI. Powers of Attorney.

Sec. 46.—Person executing a deed under a power of attorney may execute either in his own name, or the name of the donor of the power.

Sec. 47.—Attorney not to be liable for any payment made, or other act done by him, *bonâ fide*, under a power without notice of donor's death, lunacy, bankruptcy or revocation. But this does not affect any right against the person to whom money has been paid.

Sec. 48.—Powers of attorney, on their execution being verified, may be deposited in the Central Office of Supreme Court of Judicature; and any office copy thereof to be sufficient evidence of the contents of the instrument and its deposit there. (General rules of court may be made for the purposes of this section.)

Part XII. Construction and Effect of Deeds, &c.

Sec. 49.—In conveyances, either before or after the Act, the word "Grant" is not to be necessary to convey any property.

Sec. 50.—After commencement of Act, freehold land or a chose in action may be conveyed by one person direct to himself and another, or by a husband to wife, or wife to husband, either alone or jointly.

Sec. 51.—After commencement of Act, to pass fee simple, the words "in fee simple" to be sufficient without word "heirs;" and to create an estate tail, the word "in tail" to be sufficient without the words "heirs of the body;" and to

create an estate in tail, male or female, the words "in tail male," or "in tail female," as case may be, to be sufficient.

Sec. 52.—Any person entitled to a power whether coupled with an interest or not may, by deed, release or contract not to exercise it.

Sec. 53.—A deed expressed to be supplemental to another to be read and to have effect as if endorsed thereon, or as if it contained a full recital thereof.

Secs. 54 and 55.—In deeds executed after commencement of Act, receipt for consideration in the body of deed sufficient without a receipt endorsed; and any receipt, whether in body or endorsed, shall be sufficient evidence of payment to satisfy any subsequent purchaser not having actual notice of non-payment.

Sec. 56.—A solicitor in completing a purchase, &c., need not produce an authority from his client to receive the money, but his production of the deed duly executed, with receipt thereon, to be sufficient.

Sec. 57.—Deeds in the form in 4th schedule to Act, or in like form, or using like expressions shall be sufficient.

Sec. 58.—Covenants made after commencement of Act, with regard to lands of inheritance, to bind heirs and assigns without mention, and with regard to lands not of inheritance, to bind executors, administrators, and assigns without mention.

Sec. 59.—All ordinary covenants and bonds made after commencement of Act, and including any implied under Act to bind the heirs and real estate, without mention, subject to any contrary expression or intention.

Sec. 60.—Covenant after commencement of Act, and including any implied by Act, with two or more jointly to enure for the benefit of survivor or survivors, and any other person to whom right to sue devolves, subject to any contrary expression or intention.

Sec. 61.—In mortgages, transfers of mortgages, &c., made after commencement of Act, and subject to any contrary intention expressed in the instrument when money expressed to be advanced on joint account, or where the instrument is made to more persons than one jointly, and not in shares, the money shall be deemed to belong to the mortgagees or transferees, &c., on a joint account as between them and the mortgagor or obligor; and the receipt of the survivors or survivor shall be a complete discharge, notwithstanding any notice to the payer of a severance of the joint account.

Sec. 62.—Where, after commencement of Act, freeholds are conveyed to the use that any person shall have an easement, &c., thereout, it shall operate to vest such easement, &c., in that person.

Sec. 63.—In conveyances, after commencement of Act, and subject to any contrary intention, not necessary to insert “all the estate,” &c., clause, as same to be deemed included.

Sec. 64.—In construing any covenant or proviso implied under this Act, words importing singular or plural number, or the masculine gender, shall be read as also importing the plural or singular number, or as extending to females, as case may require.

Part III. Long Term.

Sec. 65.—Where a residue unexpired of not less than two hundred years of a term, which, as originally created, was for not less than three hundred years, is subsisting in land without any trust or right of redemption, and without there being either originally or by release or other means any rent or with merely a peppercorn rent or other rent having no money value, incident to the reversion, then the term may be enlarged into a fee simple to be subject, however, to the same trusts, powers, &c., as the term, by the execution of a deed containing a declaration to that effect made by any of the following persons (namely): (a) Any person beneficially entitled in right of the

term, whether subject to any incumbrance or not, to possession of any land comprised in the term, but, in case of a married woman, with the concurrence of her husband, unless she is entitled for her separate use, whether with restraint on anticipation or not, and then without his concurrence ; (b) Any person being in receipt of income as trustee, in right of the term, or having the term vested in him in trust for sale, whether subject to any incumbrance or not ; (c) Any person in whom, as personal representative of any deceased person, the term is vested, whether subject to any incumbrance or not.

Part XIV. Adoption of Act.

Sec. 66.—All persons, whether solicitors, trustees, or the parties concerned themselves, adopting the provisions of the Act to be protected in doing so.

Part XV. Miscellaneous.

Sec. 67.—All notices required by this Act must be in writing, and may be served by being left at a person's last known place of abode, or business ; or if to be served on a lessee or mortgagee by being left for him on the land or at any house or building comprised in the lease or mortgage, or in case of a mining lease by being left at office or counting-house of the mine, or by sending through the post, registered, directed to the party by name as aforesaid, to place of abode, business, or counting-house, provided letter is not returned through the post undelivered.

Sec. 68.—With regard to the Act as to statutory declarations (5 & 6 Wm. IV., c. 62) it may be cited by the short title of The Statutory Declarations Act, 1835, in any declaration made for any purpose under or by virtue of that Act, or in any other document, or in any Act of Parliament.

Part XVI. Court, Procedure, Orders.

Sec. 69.—(1.) All matters within the jurisdiction of the

court under this Act shall be assigned to the Chancery Division. (3.) Every application under the Act, except where otherwise expressed, shall be by summons at chambers (8.) General rules for purposes of Act to be deemed Rules of Court under sec. 17 of Appellate Jurisdiction Act, 1876 (39 & 40 Vict., c. 59, sec. 17).

Part XVII. Repeals.

Sec. 71.—Statutes 8 & 9 Vict., c. 119, and 23 & 24 Vict., c. 145, secs. 11 to 30, are repealed; but this is not to affect the validity or invalidity, or any operation, effect, or consequence of any instrument executed or made, or of anything done or suffered before the commencement of this Act, or any action, proceeding, or thing then pending or uncompleted; and every such action, proceeding and thing may be carried on and completed as if there had been no such repeal in this Act.

Part XVIII. Relates to Ireland.

THE THIRD SCHEDULE.

STATUTORY MORTGAGE.

PART I. (*See section 26 of Act.*)

Deed of Statutory Mortgage.

This indenture made by way of statutory mortgage, the day of , 1882, between A., of [&c.] of the one part, and M., of [&c.] of the other part. Witnesseth, that in consideration of the sum of £ now paid to A. by M., of which sum A. hereby acknowledges the receipt, A. as mortgagor and as beneficial owner, hereby conveys to M. all that [&c.] To hold to and to the use of M. in fee simple for securing payment on the day of 1883, of the principal sum of £ , as the mortgage money with interest thereon at the rate of [four] per centum per annum.

In witness, &c.

* * Variations in this and subsequent forms to be made, if required, for leasehold land, or other matter.

PART II. (*See section 27 of Act.*)*Deed of Statutory Transfer, Mortgagor not joining.*

This indenture made by way of statutory transfer of mortgage, the day of , 1883, between M., of [&c.] of the one part, and T., of [&c.] of the other part, supplemental to an indenture made by way of statutory mortgage, dated the day of , 1882, and made between [&c.] Witnesseth, that in consideration of the sum of £ now paid to M. by T., being the aggregate amount of £ mortgage money, and £ interest due in respect of the said mortgage, of which sum M. hereby acknowledges the receipt, M., as mortgagee, hereby conveys and transfers to T. the benefit of the said mortgage.

In witness, &c.

(B.)

Deed of Statutory Transfer, a Covenantor joining.

This indenture made by way of statutory transfer of mortgage, the day of , 1883, between A., of [&c.] of the first part, B., of [&c.] of the second part, and C., of [&c.] of the third part, supplemental to an indenture made by way of statutory mortgage, dated the day of , 1882, and made between [&c.] Witnesseth that in consideration of the sum of £ now paid to A. by C., being the mortgage money due in respect of the said mortgage, no interest being now due and payable thereon, of which sum A. hereby acknowledges the receipt, A., as mortgagee with the concurrence of B., who joins herein as covenantor, hereby conveys and transfers to C. the benefit of the said mortgage.

In witness, &c.

(C.)

Statutory Transfer and Statutory Mortgage combined.

This indenture made by way of statutory transfer of mortgage and statutory mortgage, the day of 1883, between A., of [&c.] of the first part, B., of [&c.] of the second part, and C., of [&c.] of the third part, supplemental to an indenture made by way of statutory mortgage, dated the day of 1882, and made between [&c.]

Whereas the principal sum of £ only remains due in respect of the said mortgage as the mortgage money, and no interest is now due and payable thereon. And whereas B is seized in fee simple of the land comprised in the said mortgage subject to that mortgage. Now this indenture witnesseth that in consideration of the sum of £ now paid to A, by C., of which sum A. hereby acknowledges the receipt, and B. hereby acknowledges the payment and receipt as aforesaid * A., as mortgagee, hereby conveys and transfers to C. the benefit of the said mortgage.

And this indenture also witnesseth that for the same consideration A.,

as mortgagee, and according to his estate, and by direction of B., hereby conveys, and B., as beneficial owner, hereby conveys and confirms to C., All that [etc.] To hold to and to the use of C. in fee simple for securing payment on the day of 1882, of † the sum of £ as the mortgage money with interest thereon, at the rate of [four] per centum per annum.

In witness, &c.

[Or, in case of further advance, after aforesaid at* insert, and also in consideration of the further sum of £ now paid by C. to B. of which sum B. hereby acknowledges the receipt, and after of at† insert, the sums of £ and £ making together]

* * Variations to be made, as required, in case of the deed being made by indorsement, or in respect of any other thing.

PART III. (See section 29 of Act).

Deed of Statutory Re-conveyance of Mortgage.

This indenture made by way of statutory re-conveyance of mortgage, the day of , 1884, between C., of [etc.] of the one part, and B., of [etc.] of the other part, supplemental to an indenture made by way of statutory transfer of mortgage, dated the day of , 1883, and made between [etc.] Witnesseth that in consideration of all principal money and interest due under that indenture having been paid, of which principal and interest, C. hereby acknowledges the receipt, C., as mortgagee, hereby conveys to B., all the lands and hereditaments now vested in C., under the said indenture. To hold to and to the use of B. in fee simple, discharged from all principal money and interest secured by and from all claims and demands under the said indenture.

In witness, &c.

* * Variations as noted above.

THE FOURTH SCHEDULE.

SHORT FORMS OF DEEDS.

(See Section 57 of Act.)

I.—Mortgage.

This indenture of mortgage made the day of , 1882, between A., of [etc.] of the one part, and B., of [etc.], and C., of [etc.] of the other part. Witnesseth that in consideration of the sum of £ paid to A. by B. and C. out of money belonging to them on a joint account, of which sum A. hereby acknowledges the receipt, A. hereby covenants with B. and C. to pay to them on the day of ,

1882, the sum of £ with interest thereon in the meantime at the rate of [*four*] per centum per annum, and also as long after that day as any principal money remains due under this mortgage to pay to B. and C. interest thereon at the same rate by equal half-yearly payments on the

day of , and the day of .

And this indenture also witnesseth that for the same consideration A., as beneficial owner, hereby conveys to B. and C. All that [&c.] To hold to and to the use of B. and C. in fee simple, subject to the proviso for redemption following (namely) that if A., or any person claiming under him, shall on the day of , 1882, pay to B. and C. the sum of £ and interest thereon, at the rate aforesaid, then B and C., or the persons claiming under them, will, at the request and cost of A., or the persons claiming under him, re-convey the premises to A., or the persons claiming under him. And A. hereby covenants with B. as follows [*here add covenant as to fire insurance or other special covenant required*].

In witness, &c.

II.—*Further Charge.*

This indenture made the day of 18 between [*the same parties as the foregoing mortgage*], and supplemental to an indenture of mortgage, dated the day of 18 and made between the same parties for securing the sum of £ and interest at [*four*] per centum per annum on property at [&c.]. Witnesseth that in consideration of the further sum of £ paid to A. by B. and C. out of money belonging to them on a joint account [*add receipt and covenant as in the foregoing mortgage*] and further that all the property comprised in the before-mentioned indenture of mortgage shall stand charged with the payment to B. and C. of the sum of £ and the interest herein-before covenanted to be paid as well as the sum of £ and interest secured by the same indenture.

In witness, &c.

III.—*Conveyance on Sale.*

This indenture made the day of 1883 between A., of [&c.] of the first part, B., of [&c.] and C., of [&c.] of the second part, and M., of [&c.] of the third part. Whereas by an indenture dated [&c.] and made between [&c.] the land hereinafter mentioned was conveyed by A. to B. and C. in fee simple, by way of mortgage for securing £ and interest and by a supplemental indenture dated [&c.] and made between the same parties those lands were charged by A. with the payment to B. and C. of the further sum of £ and interest thereon. And whereas a principal sum of £ remains due under the two before-mentioned indentures, but all interest thereon has been paid as B. and C. hereby acknowledge. Now this indenture witnesseth that in consideration

of the sum of £ paid by the direction of A. to B. and C., and of the sum of £ paid to A., those two sums making together the total sum of £ paid by M. for the purchase of the fee simple of the lands hereinafter mentioned, of which sum of £ B. and C. hereby acknowledge the receipt, and of which total sum of £ A. hereby acknowledges the payment and receipt in manner before-mentioned, B. and C. as mortgagees, and by the direction of A., as beneficial owner, hereby convey, and A., as beneficial owner, hereby conveys and confirms to M. All that [&c.] To hold to and to the use of M. in fee simple discharged from all money secured by and from all claims under the before-mentioned indentures. [Add, if required, and A. hereby acknowledges the right of M. to production of the documents of title mentioned in the schedule hereto, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.]

In witness, &c.

[The Schedule above referred to.]

[To contain list of documents retained by A.]

IV.—Marriage Settlement. .

This indenture made the day of 1882 between John M. of [&c.] of the first part, Jane S. of [&c.] of the second part, and X. of [&c.] and Y of [&c.] of the third part Witnesseth that in consideration of the intended marriage between John M. and Jane S., John M. as settlor, hereby conveys to X. and Y. all that [&c.] To hold to X. and Y. in fee simple to the use of John M. in fee simple until the marriage and after the marriage to the use of John M. during his life without impeachment of waste, with remainder after his death, to the use that Jane S. if she survives him may receive during the rest of her life a yearly jointure rent charge of £ to commence from his death, and to be paid by equal half-yearly payments the first thereof to be made at the end of six calendar months from his death if she is then living, or if not a proportional part to be paid at her death and subject to the before-mentioned rent-charge to the use of X. and Y., for a term of five hundred years without impeachment of waste on the trusts hereinafter declared and subject thereto to the use of the first and other sons of John M. and Jane S., successively according to seniority in tail male with remainder [insert here, if thought desirable, to the use of the same first, and other sons, successively according to seniority in tail with remainder] to the use of all the daughters of John M. and Jane S., in equal shares as tenants in common in tail with cross remainders between them in tail with remainder to the use of John M., in fee simple. [Insert trusts of term of 500 years for raising portions: also, if required, power to charge jointure and portions on a future marriage: also powers of sale, exchange and partition, and other powers and provisions, if and as desired.]

In witness, &c.

45 & 46 VICT., C. 39.

The Conveyancing Act, 1882.

(Commencement of Act, 1st January, 1883.)

Sec. 1.—Purchaser includes a lessee or mortgagee, or an intending mortgagee, or other person, who for valuable consideration takes or deals for property, and purchase has a meaning corresponding with that of purchaser.

Sec. 2.—Searches for judgments, deeds, or other matters, or documents, whereof entries are allowed or required to be made in the central office, may be made by an official, and certificate of result of search shall be conclusive in favor of a purchaser, and a solicitor obtaining an office copy of any such certificate shall not be answerable in respect of any loss that may arise from error in the certificate.

Sec. 3—(1.) A purchaser shall not be prejudicially affected by notice of any instrument, fact, or thing, unless—

(i.) It is within his own knowledge, or would have come to his knowledge, if such inquiries and inspections had been made as ought reasonably to have been made by him ; or

(ii.) In the same transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his counsel, as such, or of his solicitor, or other agent, as such, or would have come to the knowledge of his solicitor, or other agent, as such, if such inquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent.

This section applies to purchases made either before or after the commencement of this Act ; save that, where an action is pending at the commencement of this Act, the rights of the parties shall not be affected by this section.

Separate Trustees.

Sec. 5.—(1.) On an appointment of new trustees, a separate set of trustees may be appointed for any part of the trust property, held on trusts distinct from those relating to any other part or parts of the trust property; or if only one trustee was originally appointed, then one separate trustee may be so appointed for the first-mentioned part.

(2.) This section applies to trusts created either before or after the commencement of this Act.'

Powers.

Sec. 6.—(1.) A person to whom any power, whether coupled with an interest, or not, is given, may, by deed, disclaim the power; and, after disclaimer, shall not be capable of exercising or joining in the exercise of the power, and on such disclaimer, the power may be exercised by the other or others, or the survivors or survivor of the others, of the persons to whom the power is given, unless the contrary is expressed in the instrument creating the power. This section applies to powers created by instruments coming into operation either before or after the commencement of this Act.

Married Women.

Sec. 7.—(1.) In section 79 of the Fines and Recoveries Act, there shall, by virtue of this Act, be substituted for the words, "two of the perpetual commissioners, or two special commissioners," the words "one of the perpetual commissioners," or "one special commissioner;" and in sec. 83 of the Fines and Recoveries Act there shall, by virtue of this Act, be substituted for the word "persons" the word "person," and for the word "commissioners" the words "a commissioner;" and all other provisions of those Acts, and all other enactments having reference in any

manner to the sections aforesaid, shall be read and have effect accordingly.

(2.) Where the memorandum of acknowledgment by a married woman of a deed purports to be signed by a person authorised to take the acknowledgment, the deed shall, as regards the execution thereof by the married woman, take effect at the time of acknowledgment, and shall be conclusively taken to have been duly acknowledged.

(3.) A deed acknowledged before or after the commencement of this Act by a married woman, before a judge of the High Court of Justice in England, or before a judge of a county court in England, or before a perpetual commissioner or a special commissioner shall not be impeached or impeachable by reason only that such judge or commissioner was interested or concerned either as a party, or as solicitor, or clerk to the solicitor for one of the parties, or otherwise, in the transaction giving occasion for the acknowledgment.

(4.) The enactments 3 & 4 William IV., c. 74, sec. 84, from and including the words "and the same judge" to the end of the section and sections 85 to 88 inclusive, and 17 & 18 Vict., c. 75, are hereby repealed.

(5.) The foregoing provisions of this section, including the repeal therein, apply only to the execution of deeds by married women after the commencement of this Act.

Powers of Attorney.

Secs. 8 and 9.—(1.) If a power of attorney, given for valuable consideration, is in the instrument creating the power expressed to be irrevocable, or if whether given for valuable consideration or not it is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified, not exceeding one year from the date of the instrument, then, in favour of a purchaser the power shall not be

revoked at any time, or during the fixed period as the case may be, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power ; and any act done at any time, or during the fixed time as the case may be, by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power, had not been done or happened ; and neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor of the power, without the concurrence of the donee of the power, or of death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power.

(2.) This section applies only to powers of attorney created by instruments executed after the commencement of this Act.

Sec. 10.—(1.) Where there is a person entitled to land for an estate in fee, or for a term of years absolute or determinable on life, or for term of life, with an executory limitation over on default or failure of all or any of his issue, whether within or at any specified period or time or not, that executory limitation shall be or become void and incapable of taking effect, if, and as soon as there is living any issue who has attained the age of twenty-one years, of the class on default or failure whereof the limitation over was to take effect.

(2.) This section applies only where the executory limitation is contained in an instrument coming into operation after the commencement of this Act.

Sec. 11.—Section 65 of the Conveyancing Act of 1881, shall apply to and include every such term as in that section

mentioned, whether having as the immediate reversion thereon the freehold or not; but not—

- (i.) Any term liable to be determined by re-entry for condition broken; or
- (ii.) Any term created by sub-demise out of a superior term, itself being incapable of being enlarged into a fee simple.

Mortgages.

Sec. 12.—The right of the mortgagor, under section 15 of the Conveyancing Act of 1881, to require a mortgagee, instead of re-conveying, to assign the mortgage debt and convey the mortgaged property to a third person, shall belong to, and be capable of being enforced by each incumbrancer, or by the mortgagor, notwithstanding any intermediate incumbrance; but a requisition of an incumbrancer shall prevail over a requisition of the mortgagor, and, as between incumbrancers, a requisition of a prior incumbrancer shall prevail over a requisition of a subsequent incumbrancer.

Saving.

Sec. 13.—The repeal by this Act of any enactment shall not affect any thing that has taken place before the commencement of this Act.

55 & 56 VICT., C. 13.

Conveyancing and Law of Property Act, 1892.

(Commencement of Act, 20th June, 1892.)

An Act of six sections to amend the Conveyancing Act, 1881.

Sec. 2.—*Leases, underleases, forfeiture.*—(1) A lessor can recover as a debt due from the lessee (in addition to any damages) his reasonable costs properly incurred to a solicitor

and surveyor, or valuer, or otherwise, in reference to any breach giving a right of re-entry or forfeiture which at the lessee's request is waived by the lessor, or from which the lessee is relieved under the Conveyancing Act, 1881, or this Act.

(2.) The provision in section 14 (6) of the Conveyancing Act, 1881, that there is to be no relief against a condition for forfeiture of a lease on bankruptcy of the lessee, or on taking in execution of the lessee's interest, shall apply only after the end of a year from the bankruptcy or execution, and provided the lessee's interest be not sold within such year [*i.e.*, you can get relief (1) always within the year, or (2) after the year, if the interest is sold during the year]; but this provision does not apply to a lease of a farm, or minerals, or a public house or beershop, or a furnished dwellinghouse, or any property as to which the personal qualifications of the tenant are important to preserve the value or character of the property, or because of the neighbourhood of the lessor or his tenants.

Sec. 3.—*No fine to be exacted for licence to assign.*—A condition in a lease against assigning or underletting without licence shall (*unless the lease expressly says otherwise*) be deemed to include a proviso that no fine shall be payable for such licence, but that reasonable legal or other expenses in relation to such licence shall be paid.

Sec. 4.—*Court may protect underlessee on forfeiture of superior lease.*—Where a lessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture under the lease, the court may, on application by any underlessee either in the lessor's action or a separate action, make an order vesting in such underlessee all or any part of the property leased for the residue of the lease or a shorter term on such terms as the court thinks fit. The underlessee cannot require a lease for a term longer than his under-

lease [but apparently he may ask for it and the court may give it].

Sec. 5.—*Definitions*.—In this Act and in section 14 of the Conveyancing Act, 1881, *lease* shall include an agreement for a lease where the lessee has become entitled to have his lease granted, and *underlease* shall similarly include an agreement therefor. In this Act [*i.e.*, in section 4] *underlessee* includes any one deriving title under or from an underlessee.

Sec. 6.—*Trustees*.—A separate set of trustees (or a separate trustee) may be appointed under section 5 of the Conveyancing Act, 1882, of a part only of the trust property, *although no new trustees (or trustee) are to be appointed of other parts of the trust property*; and any existing trustee may be appointed or remain one of such separate set of trustees and every appointment already made of a separate set of trustees shall be valid although there was no retiring trustee of other parts of the trust property, and no new trustees were appointed of such other parts.

45 & 46 VICT., C. 38.

The Settled Land Act, 1882.

(Commencement of Act, 1st January, 1883.)

Sec. 2.—Any deed, will, agreement, &c., whether made or passed before or after the commencement of this Act, whereby lands stand limited by way of succession, to be deemed a settlement for the purposes of this Act.

Secs. 3, 4.—A tenant for life is to have a general power of selling or exchanging the settled estate at the best price or consideration that can reasonably be obtained either by public auction or private contract, together or in lots, with power to fix reserved biddings, and buy in at

auction. Settled land in England must not, however, be exchanged for land out of England.

Secs. 6, 7.—A tenant for life is to have a power of leasing as follows : a building lease not exceeding 99 years, a mining lease not exceeding 60 years, and any other lease not exceeding 21 years ; such leases to be by deed, to take effect within 12 months from date, at the best rent that can reasonably be obtained, to contain a covenant for payment of rent, and condition of re-entry, on non-payment within a time not exceeding 30 days, and a counterpart to be executed by lessee ; but the execution of the lease by the tenant for life to be sufficient evidence of this.

Secs. 8 to 11.—Every building lease to be partly in consideration of the erection or improvements of buildings ; a nominal rent may be reserved for first five years. In a mining lease, the rent may be made ascertainable, or to vary according to acreage worked, or minerals obtained. In both mining and building leases, on application to the court, and shewing that it is customary to do so, or that it is difficult to make leases otherwise, the court may authorise the granting of leases for longer terms, or even in perpetuity, on conditions expressed in the lease. With regard to any rent from a mining lease, there shall always be set aside as capital money part of the rent, viz., when the tenant for life is impeachable for waste, three-fourths, and otherwise one-fourth thereof.

Sec. 14.—Tenant for life of copyhold or customary property may grant licences to tenants to make any such leases as the tenant for life might make of freeholds ; such licence may fix the annual value whereon fines and other customary payments are to be assessed, and it is always to be entered on the court rolls of the manor.

Sec. 15.—Is now repealed and replaced by section 10 of Settled Land Act, 1890, see *post* p. 109.

Sec. 16.—On a sale or grant for building purposes, under foregoing provisions, the tenant for life, for the general benefit of the residents on the settled land, or any part thereof, may appropriate portions thereof for streets, roads, paths, squares, gardens, or other open spaces, and may execute any deed necessary for vesting them in any trustees, or any company or public body.

Sec. 17.—Any sale or exchange may be of land, apart from minerals, &c., and any mining lease may be of all or any of the minerals, &c.

Sec. 18.—Any money required for enfranchisement, or for equality of exchange or partition, may be raised by the tenant for life by mortgage of the settled estate, in fee simple, or for other estate, and the sum raised shall be capital money.

Sec. 20 (sub-sec. 3).—As to copyholds, any deed in manner provided by this Act to be sufficient without surrender, and thereupon admittance to be made; but the steward may require to be produced so much of the settlement as shows the title of the persons executing the deed, and the same may, if the steward thinks fit, be entered on the court rolls.

Secs. 21 to 23.—Capital money arising under this Act in addition to the particular purpose for which it is raised, may be applied as follows: In investment on Government or other securities in which trustees may invest either by law or under the settlement, or in purchase of railway debenture stock in Great Britain or Ireland, provided it has for the ten preceding years paid a dividend on its ordinary stock; in discharge of incumbrances, land tax, &c., on the settled estate; in payment for any improvement authorised by this Act (see sec. 25), or for equality of exchange or partition; in purchase of the seignory, reversion, or freehold in fee of any part of the settled

estate ; in the purchase of lands or mines or minerals in fee or of customary or copyhold tenure, or of leaseholds having not less than 60 years to run (but capital money arising from land in England not to be applied in purchase of land out of England, unless specially allowed by the settlement—sec. 23); in payment to any person becoming absolutely entitled ; in payment of any costs or expenses in connection with any of the powers under this Act ; and in any other mode in which money produced by the exercise of a power of sale in the settlement is applicable thereunder.

Sec. 22.—For the purpose of being invested or applied as specified in last section, capital money to be paid to the trustees of the settlement, or into court at option of tenant for life, and investment on application to be according to direction of tenant for life, or in default at trustees' discretion, subject to any consent or direction in the settlement. Any capital money before investment or application to still be deemed and treated as land, and the income of any capital money is to go as the income of the land would have gone under the settlement.

Sec. 25.—This section enumerates what shall be improvements authorised by the Act for the application of trust money. No less than twenty different kinds are given of which we mention the following : Draining ; warping ; irrigation ; inclosing ; reclaiming ; building farmhouses, farm cottages or saw mills ; or construction of reservoirs, tramways, railways, canals, docks, jetties, piers, market places, streets, roads, &c.

Sec. 26.—A tenant for life desirous of applying capital money in improvements is to submit a scheme to the trustees of the settlement or the court showing proposed expenditure. Where the capital money is in trustees' hands a certificate of the land commissioners (see sec. 48)

that the works are properly executed, and what amount is properly payable thereunder is necessary, or instead thereof a like certificate of a competent engineer or practical surveyor nominated by the trustees and approved by the commissioners, or instead of either an order of the court authorising the expenditure. Where the capital money is in court, then a scheme has first to be approved by the court, and then money to be paid on an order of the court, which will be granted on either of such certificates as already mentioned, or on such other evidence as the court thinks fit.

Sec. 29.—In executing, maintaining, or repairing any improvement authorised by this Act, the tenant for life or any other person not to be liable for waste, and may cut down and use timber and other trees not planted or left standing for shelter or ornament.

Secs. 30, 32, 33.—The improvements allowed by this Act are to be also allowed, and to be deemed included in the Improvement of Land Act, 1864 (27 & 28 Vict., c. 114, sec. 9), and in the Land Clauses Consolidation Acts, 1845 (8 & 9 Vict., c. 18), 1860 (23 & 24 Vict., c. 106), and 1869 (32 & 33 Vict., c. 18), and in the Settled Estates Act, 1877 (40 & 41 Vict., c. 18), and in all settlements in which money is in the hands of trustees to be laid out in the purchase of lands.

Sec. 31.—In the same way that the tenant for life may make leases and sales, so also he may contract therefor, and may revoke such contracts and enter into fresh ones, as if he were absolute owner, and every contract shall be enforceable in favor of, or against successors.

Sec. 35.—A tenant for life, though impeachable for waste, may, with the consent of the trustees of the settlement, or on an order of the court, cut and sell timber ripe and fit for cutting; but three-fourths of the net proceeds to be set aside as capital moneys, and the residue only to go as rents or profits.

Sec. 36.—The court may, if it thinks fit, approve of any action, defence, petition to Parliament, parliamentary oppositions, or other proceeding taken or proposed to be taken for protection of settled land, or for any action, or proceeding for recovery of such land, and direct the costs in connection therewith to be paid out of the settled estate. (Note.—This section is instead of sec. 17 of 40 & 41 Vict., c. 18, which is repealed. (See *post*, sec. 64.)

Sec. 37.—Heirlooms, that is—personal chattels settled on trust to devolve with the land, may, by an order of the court, be sold by tenant for life, but the proceeds to be capital moneys, to be dealt with as before authorised, or to be invested in the purchase of other chattels to devolve in like manner.

Secs. 38, 39.—In default of trustees under a settlement, the court may, on application of tenant for life, appoint new trustees, and they, or the survivors, or the personal representatives of the survivor shall be deemed the trustees of the settlement; but no capital money shall be paid to less than two trustees unless the settlement specially authorises it being paid to one only.

Secs. 40, 43.—Trustees' receipts to be full and sufficient discharges; each trustee to be liable for his own acts only, and not where he has only joined for conformity; and generally they are protected where they act *bonâ fide* in the exercise of the powers conferred on them by this Act. They are to have all the powers of reimbursing themselves expenses.

Sec. 44.—In case of difference arising between tenant for life and trustees of settlement respecting any powers, or any matters under this Act, the court may give directions respecting the matter in difference, and the costs of the application.

Sec. 45.—Tenant for life intending to exercise any of the

powers conferred by this Act shall send by registered post, not less than one month before he acts, a notice thereof to each trustee at his usual place of abode, and if he knows the trustees' solicitor then to such solicitor also at his usual place of business. There must not at the time of this notice be less than two trustees, unless allowed by the settlement. A person dealing in good faith with the tenant for life is not concerned to enquire as to whether such notice has been given. (See amendment of this section by the Settled Land Act, 1884 (47 & 48 Vict., c. 18, sec. 5), *post*, p. 104.)

Sec. 46.—This section contains regulations respecting payments into court, applications, &c., of which the following are the chief:—Matters under the Act are assigned to the Chancery Division; payment into court to be an effectual exoneration; applications to be to the court by petition, or by summons in chambers; on an application by trustees of settlement notice to be served in first instance on tenant for life, and then on such persons as the court shall think fit; general rules under the Act may be made, and to be deemed rules of court; the county court of the district where the settled estate is situate, or from where the capital money arises, or in connection with which personal chattels are settled, is to have jurisdiction under this Act, where capital money, or securities in which it is invested, or the value of the settled estate does not exceed £500, and the annual rateable value of the settled estate does not exceed £30 per annum.

Sec. 47.—Any costs, charges, or expenses may be directed by the court to be paid out of income, or out of capital money, or raised by means of sale or mortgage out of the settled estate.

Secs. 48, 49.—The Commissioners now bearing the three several styles of the Enclosure Commissioners for England and Wales, the Copyhold Commissioners, and the Tithe

Commissioners for England and Wales, shall by virtue of this Act become and be styled, the *Land Commissioners for England*. Every certificate and report approved and made by the Land Commissioners under this Act shall be filed in their office, and office copies shall be delivered out on application, and shall be sufficient evidence thereof.

Secs. 50-52.—The powers under this Act of a tenant for life are not capable of assignment or release by express act, or by operation of law, but remain exerciseable by tenant for life, except that if tenant for life has assigned his estate for value this shall not operate to assignees' prejudice, and his rights shall not be affected without his consent, but, if the assignee is not in possession, tenant for life still to have the power of making leases. Any contract by tenant for life not to exercise his powers under this Act is void, and any prohibition in the settlement or provision for forfeiture or exercise of such powers also void.

Sec. 53.—Tenant for life, in exercising powers under this Act, to have the duties and liabilities of a trustee for all parties interested in estate.

Sec. 54.—On all sales, exchanges, leases, &c., under this Act, persons dealing *bona fide* to be conclusively taken to have given the best price, consideration, or rent, and to have complied with all the requisitions of this Act.

Sec. 56.—All other powers subsisting under any settlement or statute, or otherwise exercisable by tenant for life or his trustees to be still existing, and the powers conferred by this Act to be cumulative, but, in case of any conflict, provisions of this Act to prevail; and, accordingly, the consent of tenant for life shall, by virtue of this Act, be necessary to the exercise by trustees, or other persons, of any power conferred by the settlement exerciseable for any purpose provided for in this Act. Should any doubts arise on matters within this section the court may, on

application of the trustees, or the tenant for life, or other person interested, give its decision, opinion, advice, or direction thereon.

Sec. 57.—This Act not to prevent a settlement conferring larger or additional powers than those contained in Act.

Sec. 58.—Each person, as follows, shall, when the estate or interest of each of them is in possession, have the powers of, and be deemed for the purpose of the Act to be a tenant for life, viz:—(1) Any tenant in tail, except a tenant in tail of land purchased by money provided by Parliament in consideration of public services, and he being restrained from barring his entail, and the reversion being in the Crown. (2) A tenant in fee simple with an executory limitation over. (3) The owner of a base fee. (4, 5, and 6) A tenant for years terminable on life, or a tenant *pur autre vie* not holding merely under a lease at rent. (7) A tenant in tail after possibility of issue extinct. (8) A tenant by courtesy.

Secs. 59, 60.—A person in his own right entitled to land, being an infant, for the purposes of this Act the land to be deemed settled land, and the infant tenant for life thereof. When an infant is tenant for life, the powers may be exercised by the trustees of the settlement, and, if none, then by such person, and in such manner, as the court on the application of testamentary or other guardian or next friend of the infant, either generally or in a particular instance, orders.

Sec. 61.—When a married woman is tenant for life and is entitled for her separate use, then she, without her husband, to have the powers of a tenant for life. If entitled, not for her separate use, then she and her husband together to have the powers. A restraint on anticipation not to prevent married woman's exercise of the powers of this Act.

Sec. 62.—When tenant for life, a lunatic so found by inquisition, his committee, under order of Chancellor or other person intrusted by Queen's Sign Manual, with the care and commitment of the custody of the possessions and estates of lunatics, may exercise the powers of this Act.

Sec. 63.—Land subject to a trust for sale, and the application and disposal of the money or the income until sale, or any part of the money for the benefit of one or more for life shall be deemed settled land; and the person beneficially entitled for the time being to the income shall be deemed tenant for life; and the persons (if any) who are under the settlement trustees for sale of the settled land, or have power to consent to the sale, or if no such trustees then the persons (if any), who are by the settlement declared to be trustees thereof for purposes of this Act, are for the purpose of this Act, trustees of the settlement. (See amendment of this section by the Settled Land Act, 1884 (sec. 7), *post*, p. 105.)

Sec. 64.—The following enactments, except as regards anything done thereunder before commencement of Act, are repealed, viz.:—23 & 24 Vict., c. 145, Parts I. and IV. being the residue of the Act which the Conveyancing Act, 1881, did not repeal; 27 & 28 Vict., c. 114, secs. 17 and 18, and sec. 21, from “either by a party” to “benefice or” inclusive; and from, “or, if the land owner,” to “minor or minors” inclusive; and, “or circumstances,” twice. Except as regards Scotland, 40 & 41 Vict., c. 18, sec. 17.

NOTES.—This Act forms a most important extension of the powers of limited owners of land, and it must be firstly observed that it applies, after its commencement, to all settlements of whatever date and by sec. 56, the powers conferred by other Acts are still to remain. This, therefore, leaves intact 40 & 41 Vict., c. 18, except sec. 17 thereof, which was not very important, and which is now replaced by sec. 36 of this Act. I may, perhaps, usefully point to a few special provisions in this Act. The provisions as to leases in secs. 6 to 14 should be carefully compared with those

contained in 40 & 41 Vict., c. 18. Capital money appears to be thoroughly protected, but the tenant for life has his choice of investments (sec. 22), and these powers of investment are very wide (sec. 21), and the tenant for life has very ample opportunities afforded him of improving the estate (sec. 25), subject, however, to what appear to be fair restrictions (sec. 26). Not only is an actual lease or sale by the tenant for life binding, but contracts for the same are so also (sec. 31). A difficulty that would have existed with regard to improvements, when the tenant for life is impeachable for waste, is overcome by sec. 35. Before the tenant for life can proceed to exercise his great powers, certain notices on his part are necessary (sec. 45.) It should be specially observed that contracts not to exercise his powers, or conditions against his exercising them, are worthless as against the tenant for life (secs. 50, 51, 52).

In considering this Act, the student must at the same time now study the Settled Land Acts, 1884, 1887 (*post*, p. 106), and 1890 (*post*, p. 107), which are all to be construed as one with this Act.

47 & 48 VICT., C. 18.

The Settled Land Act, 1884.

(Commencement of Act, 3rd July, 1884.)

Sec. 3.—This Act is to be read and construed as one with the Settled Land Act, 1882.

Sec. 4.—A fine received on the grant of a lease under any power conferred by the Settled Land Act, 1882, is to be deemed capital money arising under that Act.

Sec. 5.—(1.) The notice required by sec. 45 of the Act of 1882, of intention to make a sale, exchange, partition, or lease, may be notice of a general intention.

(2.) On the request of the trustee, the tenant for life must furnish such particulars and information as may be reasonably required of him with reference to sales, exchanges, partitions or leases effected or in progress, or immediately intended.

(3.) A trustee may, by writing, waive notice or accept less than a month's notice.

(4.) The section applies to a notice given before, as well as to a notice given after the Act.

(5.) But not to a notice, the sufficiency of which was objected to before the passing of the Act.

Sec. 6.—(1.) In the case of a settlement within the meaning of section 63 of the Act of 1882, any consent not required by the terms of the settlement is not by force of anything contained in the Act of 1882, to be deemed necessary to enable the trustees of the settlement, or any other person to execute any of the trusts or powers created by the settlement.

(2.) In the case of every other settlement, not within the section 63 of the Act of 1882, if two or more persons constitute the tenant for life, then, notwithstanding anything contained in sub-section (2) of section 56 of the Act of 1882, which requires the consent of all those persons, the consent of one only of those persons is to be deemed necessary to the exercise by the trustees of the settlement, or by any other person, of any power under the settlement for any purpose provided by the Act of 1882.

(3.) The section applies to dealings before as well as after the passing of the Act.

Sec. 7.—With respect to the powers conferred by section 63 of the Act of 1882, the following provisions are to take effect :—

(1.) Those powers are not to be exercised without the leave of the court.

(2.) The court may by order give leave to exercise all or any of those powers, and the order is to name the person or persons to whom the leave is given.

(3.) The court may from time to time rescind or vary any order or make any new order under this section.

(4.) So long as an order under this section is in force, neither the trustees of the settlement nor any person other

than the person having the leave, shall execute any trust or power created by the settlement, for any purpose for which leave has been given.

(5.) An order under the section may be registered or re-registered as a *lis pendens* against the trustees of the settlement, describing them as "Trustees for the purposes of the Settled Land Act, 1882."

(6.) Any person dealing with the trustees is not to be affected by any order made under this section, unless registered and re-registered as a *lis pendens*.

(7.) An application to the court under this section may be made by the tenant for life, or by the persons who constitute the tenant for life.

(8.) An application to rescind or vary an order may also be made by the trustees of the settlement, or any person beneficially interested.

(9.) The person or persons to whom leave is given shall be deemed the proper person or persons to exercise the powers conferred by section 63 of the Act of 1883.

(10.) This section is not to affect any dealings which have taken place before the passing of the Act under any trust or power to which this section applies.

Sec. 8.—For the purposes of the Act of 1882, the estate of the tenant by the courtesy is to be deemed an estate arising under a settlement made by his wife.

50 & 51 VICT., C. 30.

Settled Land Acts (Amendment) Act, 1887.

(Commencement of Act, 23rd August, 1887.)

Sec. 1.—Where any improvement of a kind authorised by sec. 21 of the Settled Land Act, 1882, has been or may be made either before or after 23rd August, 1887, and a rent-

charge whether temporary or perpetual, has been or may be created in pursuance of any Act of Parliament, with the object of paying off any moneys advanced for the purpose of defraying the expenses of such improvement, any capital money expended in redeeming such rentcharge, or otherwise providing for the payment thereof, shall be deemed to be applied in payment for an improvement authorised by the Act of 1882.

Sec. 2.—Any improvement in payment for which capital money is applied or deemed to be applied under the preceding section shall be deemed to be an improvement within the meaning of sec. 28 of the Settled Land Act, 1882, and the provisions of such last-mentioned section shall, so far as applicable, be deemed to apply to such improvement.

53 & 54 VICT., C. 69.

Settled Land Act, 1890.

(*Commencement of Act, 18th August, 1890.*)

Sec. 4.—Every instrument whereby a tenant for life (in consideration of marriage or by way of a family arrangement, not being a security for a loan), assigns or creates a charge on his interest under the settlement shall be deemed (whether made before or after this Act) one of the instruments creating the settlement, and not an instrument vesting in any person any right as assignee for value within sec. 50 of the 1882 Act.

Sec. 5.—On an exchange or partition (1) any easement, right, or privilege may be reserved or granted over or in relation to the settled land, or (2) other land or an easement, right, or privilege of any kind may be given or taken in exchange or on partition for land or for any other easement, right, or privilege.

Sec. 6.—A tenant for life may make any conveyance necessary or proper for giving effect to a contract entered into by a predecessor in title, and which if made by such predecessor would have been valid as against his successors in title.

Sec. 7.—A lease not exceeding 21 years at the best rent that can be reasonably obtained *without fine*, and whereby the lessee is not exempted from punishment for waste, may be made by a tenant for life—

- (1) Without any notice of intention to make it being given under sec. 45 of the 1882 Act; and
- (2) Although there are no trustees of the settlement for the purposes of the Settled Land Acts; and
- (3) By signed writing containing an agreement by the lessee to pay rent, if the term does not exceed three years from the date of the writing.

In a mining lease (1) the rent may be made to vary according to the price of the substances gotten; (2) such price may be the saleable value, or the price or value appearing in any trade or market or other price list or return from time to time, or may be the marketable value as ascertained in manner prescribed by the lease (including arbitration), or may be an average of any such prices or values during a specified period (sec. 8).

Sec. 9.—Where, on a building grant by a tenant for life, the land is conveyed in fee simple with, or subject to, a reservation thereout of a perpetual rent or rentcharge, the reservation shall create a rentcharge in fee simple issuing out of the land, and having incident thereto all remedies for recovery thereof conferred by sec. 44 of the Conveyancing Act, 1881, and the rentcharge so created shall go to the same uses and trusts as those upon which the land itself was held before such conveyance.

Sec. 10.—Repeals sec. 15 of the 1882 Act, and provides

instead that the principal mansion house (if any), and the pleasure grounds and park and lands (if any) usually occupied therewith, shall not be sold, exchanged, or leased by the tenant for life without the consent of the trustees of the settlement or an order of court, except (1) where a house is usually occupied as a farmhouse, or (2) where the site of any house and the pleasure grounds and park and lands usually occupied therewith do not together exceed 25 acres in extent.

Sec. 11.—Where money is required for discharging an incumbrance (which is not any annual sum payable only during a life or lives or during a term of years absolute or determinable) on the settled land, the tenant for life may raise such money, and the costs, on mortgage (1) by conveyance of the fee simple or other estate subject to the settlement, or (2) by creation of a term of years in the settled land, or otherwise, and the money so raised shall be capital money for that purpose.

Sec. 12.—Where a sale of settled land is to be made to the tenant for life, or a purchase is to be made from him of land to be made subject to the settlement, or an exchange is to be made with him of settled land for other land, or a partition is to be made with him of land, an undivided share whereof is subject to the settlement, the trustees of the settlement shall stand in the place of the tenant for life, and shall (in addition to their powers as trustees) have all his powers for negotiating and completing the transaction.

Sec. 13.—The improvements authorised by the 1882 Act shall include (1) bridges ; (2) making any additions or alterations to buildings reasonably necessary or proper to enable the same to be let ; (3) erection of buildings in substitution for buildings in an urban sanitary district taken by a local or other public authority, or for buildings taken under compulsory powers, provided the expenditure does not exceed

the amount received for the buildings taken and their site ; and (4) re-building the principal mansion house, provided the expenditure does not exceed half of the annual rental of the settled land.

Sec. 14.—Capital money paid into court may be paid out to the trustees of the settlement for the purposes of the Settled Land Acts.

Sec. 15.—The court may order capital money to be applied in or towards payment for any improvement authorised by the Settled Land Acts, although a scheme was not, before execution of the improvement, submitted for approval to the trustees of the settlement or to the court.

Sec. 16.—If there are, for the time being, no trustees of the settlement for the purposes of the 1882 Act, the following persons shall be such trustees :—

(i.) Any persons for the time being under the settlement trustees, with power of or upon trust for sale of any other land comprised in the settlement and subject to the same limitations as the land to be sold, or with power of consent to or approval of the exercise of such a power of sale ; or, if no such person, then

(ii.) Any persons for the time being under the settlement trustees with future power of sale, or under a future trust for sale of the land to be sold, or with power of consent to or approval of the exercise of such a future power of sale, and whether the power or trust takes effect in all events or not.

Sec. 17.—All the provisions of the Conveyancing Act, 1881 as to appointment of new trustees and discharge and retirement of trustees apply to trustees for the purposes of the Settled Land Acts, whether appointed by the court or by the settlement or under provisions contained in the settlement.

Sec. 18.—The provisions of sec. 11 of the Housing

of the Working Classes Act, 1885, and of any enactment which may be substituted therefor—*i.e.*, now sec. 74 of the Housing of the Working Classes Act, 1890—shall have effect as if “working classes” included all classes of persons who earn their livelihood by wages or salaries: but this section shall apply only to buildings of a rateable value not exceeding £100 per annum.

51 & 52 VICT., C. 59.

The Trustee Act, 1888.

(Commencement of Act, 24th December, 1888.)

Sec. 1.—In this Act “trustee” includes an executor or administrator and a trustee by construction or implication of law as well as an express trustee, but not the official trustee of charitable funds. Act applies to several joint trustees as to a sole trustee.

Sec. 2.—(1.) A trustee may appoint a solicitor to be his agent to receive and give a discharge for any money, valuable consideration, or property receivable by such trustee under the trust, *by permitting such solicitor to have custody of and to produce* a deed containing the receipt referred to in sec. 56 of the Conveyancing Act, 1881 (*i.e.*, a deed containing in its body or indorsed thereon a receipt for the consideration, the deed being executed or the indorsed receipt signed by the person entitled to give a receipt for such consideration); and no trustee is chargeable with breach of trust by reason only of his having made or concurred in such appointment; and the producing of such deed by such solicitor shall have the same validity and effect under the said section 56 as if the person appointing such solicitor had not been a trustee (*i.e.*, shall be a sufficient authority for the party liable to pay the

consideration giving the same to the solicitor without his producing any separate authority from the trustee). But the trustee is not exempted from liability if he lets the money, valuable consideration, or property remain in the hands or under the control of the solicitor any longer than is reasonably necessary for the solicitor to pay or transfer the same to the trustee.

(2.) A trustee may, without breach of trust, appoint a banker or solicitor his agent to receive and give discharge for any money payable to him under a policy of assurance, by permitting such banker or solicitor to have custody of and produce such policy with a receipt signed by such trustee; but such trustee is not exempt from liability if he leaves such money in the hands or under the control of the banker or solicitor for longer than is reasonably necessary for the banker or solicitor to pay it to the trustee.

(3.) This section only applies where the money or valuable consideration or property is to be received after 24th December, 1888.

Sec. 3.—(1.) A *cestui que trust* cannot impeach a sale by his trustee on the ground that any condition of sale was unnecessarily depreciatory *unless* the consideration for the sale was thereby rendered inadequate.

(2.) After execution of the conveyance, no sale by a trustee shall be impeached against the purchaser on the ground of any condition of sale being unnecessarily depreciatory, *unless* such purchaser was acting in collusion with the trustee when the contract for sale was made.

(3.) No purchaser on a sale by a trustee can make any objection against the title upon the ground aforesaid.

(4.) Section only applies to sales made after 24th December, 1888.

Sec. 4.—(1.) No trustee lending money on security of any property is chargeable with breach of trust by

reason only of the proportion borne by the amount of loan to the value of the property at the time when the loan was made, *provided* it appears to the court that the trustee was acting upon a report as to the value of the property made by a person whom he reasonably believed to be an able practical surveyor or valuer, instructed and employed independently of any owner of the property, whether such surveyor or valuer carried on business where the property is situate or elsewhere, and the loan did not exceed two equal third parts of the value of the property as stated in such report, and the loan was made under the advice of such surveyor or valuer expressed in such report. This section applies to a loan on property of any tenure, whether agricultural or house or other property, on which the trustee can lawfully lend.

(2.) No trustee lending money on leasehold property is chargeable with breach of trust for dispensing (wholly or partially) with production or investigation of the lessor's title.

(3.) It is not a breach of trust in buying property or lending money, to accept a shorter title than a purchaser is (in the absence of a special contract) entitled to, if the court thinks a person acting with prudence and caution would have accepted the same title.

(4.) This section applies to transfers of existing securities as well as to new securities, and to investments made as well before as after this Act, except where proceedings were pending on 24th December, 1888.

Sec. 5.—Where a trustee advances an improper sum on a mortgage security, it shall be deemed an authorised security for the less sum which might, at the time of investment, have been properly advanced thereon, and the trustee shall only be liable to make good the excess with interest. This section is retrospective, except as to actions pending on 24th December, 1888.

Sec. 6.—Where a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the court may—even if the beneficiary is a married woman entitled for separate use without power to anticipate—impound all or any part of the beneficiary's interest, to indemnify the trustee or any one claiming through him. This section is retrospective, except as to proceedings pending on 24th December, 1888.

Sec. 7.—A trustee may (but is not obliged to) insure against fire, any building or other insurable property to any amount not exceeding three-fourths of its full value, and may pay the premium out of the income of the trust property without the consent of the beneficiaries; but this does not apply to property which the trustee is bound to convey absolutely to the *cestui que trust* on request.

Sec. 8.—(1.) In any proceeding against a trustee, or any one claiming through him—except the claim is for fraud or fraudulent breach of trust to which the trustee was party or privy, or for recovery of trust property, or its proceeds still retained by the trustee, or previously received by the trustee and converted to his use—

- (a.) The benefit of any statute of limitations shall be enjoyed as if the defendant had not been a trustee or person claiming through him.
- (b.) If the proceeding is to recover money or other property, and is one to which no existing statute of limitation applies, the defendant may plead lapse of time as a bar in the same way as if the proceeding were an action of debt for money had and received, but so that the statute shall run against a married woman entitled in possession for her separate use (whether restrained from anticipation or not) but shall not begin to run against any beneficiary until his interest is an interest in possession.

(2.) No beneficiary against whom this section would be a good defence shall have any other benefit from a judgment or order obtained by another beneficiary than he could have had if he had sued, and this section had been pleaded.

(3.) This section only applies to proceedings commenced after 1st January, 1890, and does not deprive any executor or administrator of any right or defence under any existing statute of limitations.

Sec. 9.—Power to invest in real securities shall authorise, and be deemed to have always authorised, an investment on mortgage of property held for an unexpired term of at least 200 years, and not subject to a greater rent than one shilling a year or to any right of redemption, or to any right of re-entry except for non-payment of rent.

Sec. 10.—A trustee of leaseholds for lives or years which are renewable by covenant, contract, custom, or usual practice may—and if required by a person having any present, future or contingent beneficial interest therein, must—use his best endeavours to obtain from time to time a renewed lease on accustomed and reasonable terms, and for that purpose may do all requisite acts ; but this section does not apply where by the terms of the settlement or will the person in possession for life or other limited interest is entitled to enjoy without obligation to renew or contribute to the expense of renewing, unless such person consents in writing to the trustee renewing.

Sec. 11.—A trustee so renewing a lease may pay any money required for renewal out of the trust funds, or raise it by mortgage of the renewed lease or other trust estate, and no such mortgagee shall be bound to see that the money is wanted or that no more is raised than is wanted.

Sec. 12.—This Act applies to trusts created by instrument executed before as well as to trusts created after 24th December, 1888. But, save as in this Act expressly pro-

vided, nothing herein shall authorise any trustee to do anything expressly forbidden or to omit anything expressly directed by the trust instrument.

52 & 53 VICT., C. 32.

Trust Investment Act, 1889.

(*Commencement of Act, 12th August, 1889.*)

Sec. 3.—It shall be lawful for a trustee, unless expressly forbidden by the instrument (if any) creating the trust, to invest any trust funds in his hands in manner following, *i.e.*—

- (a.) In any of the Parliamentary Stocks or Public Funds or Government Securities of the United Kingdom :
- (b.) On real or heritable securities in Great Britain or Ireland :
- (c.) In the stock of the Bank of England or the Bank of Ireland :
- (d.) In India $3\frac{1}{2}$ per Cent. Stock and India 3 per Cent. Stock, or in any other Capital Stock which may at any time hereafter be issued by the Secretary of State in Council of India, under the authority of Act of Parliament, and charged on the revenues of India :
- (e.) In any securities the interest of which is or shall be guaranteed by Parliament :
- (f.) In consolidated stock created by the Metropolitan Board of Works, or which may at any time hereafter be created by the London County Council, or in Debenture Stock created by the Receiver for the Metropolitan Police District :
- (g.) In the Debenture or Rentcharge or Guaranteed or Preference Stock of any railway company in Great Britain or Ireland incorporated by special Act of

Parliament, and having during each of the ten years last past before the date of investment paid a dividend at the rate of not less than 3 per centum per annum on its ordinary stock :

- (h.) In the stock of any railway or canal company in Great Britain or Ireland whose undertaking is leased in perpetuity or for a term of not less than 200 years at a fixed rental to any such railway company as is mentioned in sub-section (g) either alone or jointly with any other railway company :
- (i.) In the Debenture Stock of any railway company in India the interest on which is paid or guaranteed by the Secretary of State in Council of India :
- (j.) In the "B" Annuities of the Eastern Bengal, the East Indian and the Scinde Punjab and Delhi Railways, and any like annuities which may at any time hereafter be created on the purchase of any other railway by the Secretary of State in Council of India, and charged on the revenues of India, and which may be authorised by Act of Parliament to be accepted by trustees in lieu of any stock held by them in the purchased railway :
- (k.) In the stock of any railway company in India upon which a fixed or minimum dividend in sterling is paid or guaranteed by the Secretary of State in Council of India :
- (l.) In the Debenture or Guaranteed or Preference Stock of any Company in Great Britain or Ireland established for the supply of water for profit, and incorporated by special Act of Parliament or by Royal Charter, and having during each of the ten years last past before the date of investment paid a dividend of not less than £5 per centum on its ordinary stock :
- (m.) In nominal or inscribed stock issued, or to be

issued, by the corporation of any municipal borough, having according to the returns of the last census prior to the date of investment a population exceeding 50,000, or by any county council, under the authority of any Act of Parliament or Provisional Order :

(n.) In nominal or inscribed stock issued or to be issued by any Commissioners incorporated by Act of Parliament for the purpose of supplying water, and having a compulsory power of levying rates over an area having, according to the returns of the last census prior to the date of investment, a population exceeding 50,000, provided that during each of the ten years last past before the date of investment the rates levied by such Commissioners shall not have exceeded eighty per cent. of the amount authorised by law to be levied:

(o.) In any of the stocks, funds, or securities, for the time being authorised for the investment of cash under the control or subject to the order of the Court :

and also from time to time to vary any such investment.

Sec. 4.—(1.) It shall be lawful for a trustee under the powers of this Act to invest in any of the stocks, funds, shares, or securities mentioned or referred to in sec. 3, notwithstanding that the same may be redeemable, and that the price exceeds the redemption value.

(2.) Provided that it shall not be lawful for a trustee under the powers of this Act to purchase at a price exceeding its redemption value, any stock mentioned or referred to in sub-sections (g), (i), (k), (l), and (m), which is liable to be redeemed within fifteen years of the date of purchase at par or at some other fixed rate, or to purchase any such stock as is mentioned or referred to in the sub-sections aforesaid, which is liable to be redeemed at par or at some other fixed rate, at a price exceeding fifteen per cent. above par or such other fixed rate.

(3.) It shall be lawful for a trustee to retain until redemption any redeemable stock fund or security which may have been purchased in accordance with the powers of this Act.

Sec. 5.—Every power conferred by this Act shall be exercised according to the discretion of the trustee, but subject to any consent required by the instrument (if any) creating the trust with respect to the investment of the trust funds.

Sec. 6.—This Act shall apply as well to trusts created before as to trusts created after the passing of this Act, and the powers hereby conferred shall be in addition to the powers conferred by the instrument (if any) creating the trust.

Sec. 7.—Where the council of any county or borough or any urban or rural sanitary authority are authorised or required to invest any money for the purpose of a loans fund or a sinking fund, any enactment relating to such investment shall be modified so far as to allow such money to be invested in any of the stocks, funds, shares, or securities, in which trustees are authorised by this Act to invest, except that such council or authority shall not by virtue of this section invest in any stocks, funds, shares, or securities issued or created by themselves, nor in real or heritable securities. But it shall not be lawful for any such council or authority to retain any securities which are liable to be redeemed at a fixed time at par or at any other fixed rate and are at a price exceeding their redemption value, unless more than fifteen years will elapse before the time fixed for redemption.

Sec. 9.—For the purposes of this Act:—“*Trustee*” shall include an executor or administrator and a trustee whose trust arises by construction or implication of law as well as an express trustee. “*Stock*” shall include fully paid-up shares. “*Instrument*” shall include a Private Act of Parliament. “*The Court*” shall mean (except as to Irish trusts) the High Court of Justice in England, and as to Irish trusts, the High Court of Justice in Ireland.

